

Zilla Court

Decisions

Case No - 37(1847)

1850



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ZILLAH BACKERGUNGE.

PRESENT: W. J. H. MONEY, ESQ., JUDGE.

THE 6TH MARCH 1850.

No. 37 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 24th April 1847.

Ramlochan Sein, Golukchunder Sein, and Jhurroo Sheekdar, (Defendants,) Appellants,

Ram Cumul Sein, (Objector,) Appellant,

versus

Ramkishore Chukurbutte, Adaree Beebee, mother of Dhunnoo Sheekdar, minor, and Budulee Beebee, mother of Nukko Sheekdar, minor, wives of Futtik Sheekdar, deceased, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs, to reverse an order of the sessions court under Act IV. 1840, and to obtain possession of the land of a 10 annas share of a talook, with mesne profits; laying their damages at rupees 620. They represented that in kisanut Kybutkalee connected with the 2 annas, 17 gundahs, 2 cowrees' share of pergunnah Sulloemabad, there was a talook called Pranbullub Sein at a jumma of Company's rupees 85, annas 5, pic 4, of which a 6 annas share was recorded in the name of Rughoonat Sein, and a 4 annas share in the name of Radha Madhub Sein: that the defendants, Ramlochan Sein and Golukchunder Sein, for a consideration of rupees 100, gave them (plaintiffs) a "meeras" farming lease of this 10 annas share on the 17th Phalgun 1254, and they were in possession accordingly: that, on the 10th Kartik 1252, Jhurroo defendant having given a petition under Act IV. 1840, stating himself to have had a farm of the land in question, and complaining of the defendants ejecting him, the plaintiffs gave a counter petition, when the magistrate, considering that Jhurroo and the other defendants were colluding together, gave possession to the plaintiffs, which order was subsequently reversed in appeal by the sessions judge.

Ramlochan Sein and Golukchunder Sein denied the dispossession or the delivery of the "meeras pottah" alluded to: they observed that there was a talook called after their ancestor Pranbullub Sein, of which, after a sub-division into 16 shares, a 5 annas, 6 gundahs, 2 cowrees, 2 krants belonged to Kishen Kinkur Sein, which, with the same amount for Bissessur Sein, had been separated for a long time,

leaving a 5 annas, 6 gundahs, 2 cowrees, 2 krants' share of Pranbullub Sein, of which, after a sub-division into 16 shares, a 6 annas share belonged to Ramlochung Sein and Rughoonat Sein, and a 4 annas share to Golukchunder Sein's father, Radhamadub Sein, and a 6 annas share to Surbo Mungla's father-in-law, Kishenchunder Sein, deceased: of the 6 annas share first mentioned an ousut talook had been created in the name of Sheekhunder Sein, and after his death his son Peetumber Sein and Ramlochung, and after Peetumber's death his son Ram Cumul and Ramlochung were in possession, and, on the 11th Bysakh 1250, gave to Jhurroo Sheekdar a farm of that ousut talook for six and half years, and Golukchunder also gave him a farm of his 4 annas share of the talook for ten years, and Surbo Mungla of her 6 annas share for nine years. In consequence of the plaintiffs on the part of the zemindars, Rajinder Narain and Bissessur Rae, having ejected Jhurroo Sheekdar, he brought the suit mentioned under Act IV. 1840, which ended in his obtaining possession under the orders of the sessions court: that the plaintiffs had mistaken the amount of the jumma of the 6 annas and 4 annas share of the talook, and as Ramlochung and Ram Cumul had each a 3 annas share, it was unlikely Ramlochung could give a "meeras" farm of the entire 6 annas share, and if this said farm had been true, how was it that, when Assabooddeen Akhoon on the part of Futtik Sheekdar did not pay the rent of Golukchunder's 4 annas share to Jhurroo Sheekdar, Futtik Sheekdar became his security? and after the ejectment of Jhurroo Sheekdar there was no mention of any "meeras" farm in the dakhilas which the plaintiffs gave to the ryots: nor was the pottah registered or produced at the time the case under Act IV. 1840 was pending.

The plaintiffs, in their replication, denied the existence of the ousut talook, or of the share of Ram Cumul Sein, and as there was no investigation of proprietary rights under Act IV. 1840, there was no necessity to file their pottah.

Ram Cumul Sein filed a petition in support of Ramlochung's statement, and declaring himself to have a 3 annas share in the ousut talook alluded to. Jhurroo Sheekdar's reply was corroborative of Ramlochung's statement. In refutation of this Ramkishore observed that Jhurroo's son, Shuruffollah, had paid him rent, which would not have been the case if Jhurroo's farming lease were true: again Ramlochung and Golukchunder Sein alluded to the land having been under cultivation for seven generations, and the value estimated by the plaintiffs being quite incorrect.

The principal sudder ameen considered the grant of the "meeras pottah" to the plaintiffs, dated the 17th Phalagoon 1251, and their possession in consequence, were fully established, and entertained suspicions of the genuineness of the pottahs filed by Jhurroo Sheekdar from the appearance of the paper, and also from the circumstance of the tahoods being dated one day prior to the pottah: and with

respect to the claim of Ram Cumul Sein as a 3 annas sharer in ousut talook, he was of opinion that the copy of the notice from the collectorate filed in support of that fact was unworthy of credit, because it was subsequent to the creation of the "meeras ijara pottah" of the plaintiffs: and rejecting the evidence adduced by Ram Cumul in support of his claim as being contradictory, he reversed the order of the sessions court, dated the 20th October 1845, and gave a decree for the plaintiffs with mesne profits and costs against Ramlochan Sein, Golukchunder Sein, and Jhurroo Sheekdar, with the understanding that his order did not affect any right Ram Cumul Sein might be able to establish with regard to his 3 annas share.

The appellants observed that the jumma of the talook mentioned by the respondents was quite incorrect: that the proper jumma was rupees 83, annas 3, pie 2, krants 8, of which a 6 annas share was Sreemuttec Surbo Mungla's at a jumma of rupees 33, anna 1, krants 16, and a 4 annas share of Golukchunder Sein, at a jumma of rupees 20, pies 10, krants 6, and a 6 annas share of Ramlochan and Ram Cumul Sein at a jumma of rupees 30, anna 1, pies 8, krants 6, of which latter share an ousut talook was formed at a jumma of rupees 41, in the name of Sheebchunder Sein, Ram Cumul's grandfather: that their ancestor Ramchunder Sein had four sons, namely, Pran Bullub, Ram Gopal, Lukkee Puttec, and Kishen Jeewun, each with a 4 annas share; that Golukchunder was the son of the adopted child of Pranbullub; and in consequence of Kishen Jeewun dying without children his 4 annas share was divided between Ram Gopal and Lukkee Puttec, the former being the ancestor of the husband of Surbo Mungla, and the latter of Ramlochan and Ram Cumul Sein: they observed also that the value of the 10 annas share would be 1,200 or 1,300 rupees instead of 600, as alleged; and it was unaccountable that they should give a pottah for such land for a consideration only of rupees 100: that the purchaser of the stamp paper, Nub-kishen Chung, was a servant of the respondents, which paper moreover was of too low a value, and the sum of rupees 100 entered in the document was suspicious from the amount not being written also, as is usual in letters: that the signature of Ramlochan and Golukchunder Sein on that said pottah differed materially from their actual hand-writing, and if the pottah had been in existence at the time the case under Act IV. 1840 was pending, it would of course have been produced, and should moreover have been registered: that the witnesses to that pottah referred to by the principal sudder ameen were defendants in the case under Act IV. 1840; and with respect to the principal sudder ameen's suspicions regarding the date of their tahoods and pottahs, they remarked that in cases of a farming lease it did sometimes occur that the tahood would be taken first, and the lease prepared afterwards.

The objections of the respondents were merely a repetition of their former pleas, with the exception of their denial of the custom

alleged by the appellants relative to the preparation of the tahoods and pottahs on different dates.

It is true that Ram Cumul Sein has not very satisfactorily established his right as a 3 annas sharer, but the papers afford grounds for believing its existence, and Ramlochun Sein has acknowledged it, and the respondents have not been able to refute Ram Cumul's claim on that point. If the pottah of the respondents had been in existence when the case under Act IV. 1840 was pending, it would most assuredly have been produced, nor has their possession in the mofussil by virtue of that pottah been clearly established either formerly or in the present case. I can moreover discover no cause for suspicion, as mentioned by the principal sudder ameen, of the pottahs of the appellants; and if they are to be judged of by appearance the weight of suspicion is certainly stronger against the pottah of the respondents, for, independent of its not being registered and being on paper originally of too low a value, the amount of "100" rupees was evidently an afterthought, a blank being left apparently as if uncertain what sum to insert, which would not have been the case if the pottah had been prepared from a draft after proper consideration. I admit that it would have been more satisfactory if the dates of the tahoods and pottahs filed by the appellants corresponded, but I do not think the discrepancy is of sufficient importance when considered in connection with the reasons for rejecting the pottah of the respondents. I decree therefore this appeal, reverse the principal sudder ameen's order, and dismiss the claim of the respondents, who will pay the costs of both courts.

THE 7TH MARCH 1850.

No. 60 of 1849.

Appeal from the decision of Umbeeka Churn, Moonsiff of Burrisaul, dated the 28th April 1849.

Kally Doss Dutt, (Defendant,) Appellant,

versus

Kishen Chunder Banorjeca, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff to recover the sum of 100 rupees, besides interest, from the defendant, upon a written instrument dated the 24th Bysakh 1243, and executed at Neamutpore.

The defendant denied the debt, declared Ram Coomar Dutt, with whom he had a dispute, had brought this case against him: that he was not at Neamutpore at the time the debt was said to have been incurred, but at his own residence two days off: that the plaintiff had procured some old stamp paper, and it was unintelligible how he should remain silent for so long a time as eleven years and ten months without making any demand for his money.

The plaintiff, in his replication, declared that Ram Coomar Dutt, who was a nephew of the defendant, was his (plaintiff's) enemy.

The defendant, in his rejoinder, remarked that the plaintiff had taken a form of a howla in his (defendant's) talook in the name of his son from 1239 to 1249, and if any money was owing why did he not deduct it from the rent?

The moonsiff, with reference to the signature of the defendant on the written instrument tallying with that on his wukalutnamah, and comparing also the signatures of Sumboo Chunder Dutt and Brij Kishore, considered the debt proved, and gave a decree for the plaintiff.

The appellant alluded to Brij Kishore, one of the witnesses, denying the transaction, and another witness being a servant in the employ of the plaintiff, and a third witness admitting that he knew him (appellant) and yet could not point him out in court.

The respondent, amongst other matters, observed that, if the bond had really been fabricated, it was very unlikely he would have written the name of the gomashtha and purohit of the appellant, the former of whom was not produced.

After maturely considering the probabilities of this case, it appears that the writing of the signature of Sumboo Chunder Dutt in the bond is exactly similar to that in the body of the instrument, and is acknowledged as such by the appellant's vakeel. I am of opinion therefore that the appellant's failure to produce Sumboo Chunder Dutt, who could have afforded so much satisfactory information on the subject, must be considered as evidence against him. I see no reason to disturb the moonsiff's decision, which is confirmed, and the appeal dismissed, with costs.

THE 7TH MARCH 1850.

No. 86 of 1849.

Appeal from the decision of Umbeeka Churn Mitter, Moonsiff of Burrisaul, dated the 23rd June 1849.

Mudun Narain Bose, (Plaintiff,) Appellant,
versus

Sheik Kabel, Gureeboollah, Jureeb Akhoond, sons of Rubbeeoollah, deceased, and Mirban Beebee, wife of Jureeb Akhoond, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff to recover the sum of rupees 27, annas 15, pies 4, principal and interest due from the defendants according to their tahood as rent, after deducting collections from the year 1252 to 1254, on account of their neemhowla in howla Arman, connected with his purchased talook and zimma called Doorga Shurun Nag and Ramkaunt Nag, kismut Chapanee, chukla Caghasoora, pergunnah Chunderdeep.

The defendants denied having executed any tahood or given any rent: that the plaintiff had not purchased howla, Arman, but a talook, and therefore had nothing to do with them as talookdar.

The plaintiff, in his replication, alluded to the custom in pergunnah Chunderdeep of a neem-howladar paying rent to the talookdar, and the surplus profit to the howladar.

The moonsiff discredited the tahood said to have been executed by the defendants, in consequence of some discrepancies in the evidence of the witnesses, and could not understand what connection the neem-howladar had with the talookdar; and although the defendants had adduced no evidence on their side, he considered that the plaintiff had failed to establish his claim, and dismissed it accordingly.

The appellant referred to the tahood given by the respondents having been clearly established, and to the former talookdars prior to his purchase having received the rent of the howladar from the neem-howladar, in the same manner, according to the "burat" of the howladar.

The respondents repeated their former pleas, and declared that there was nothing on record to prove the existence of the "burat" of the howladar.

In this case the tahood executed by the respondents was fully established, and the discrepancy of the witnesses noticed by the moonsiff was quite immaterial to the point at issue, besides which the respondents have produced no evidence to show that they have paid their rent to the howladar, nor has he urged any objections. Under these circumstances, I see no reason to doubt the statement of the appellant.

The appeal is decreed, the moonsiff's order reversed, and the appellant will recover the amount claimed, with interest to the date of payment, and the respondents will pay the costs of both courts.

THE 18TH MARCH 1850.

No. 46 of 1846.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 24th August 1846.

Kally Doss Bhadoree and Neel Comul Bhadoree, for themselves and as guardians of Bhuwanee Shunker Bhadoree, a minor brother, (Plaintiffs,) Appellants,

versus

Cumul Kishen Rae, Cashee Chunder Rac, Tarnee Churn Rae, Rajundur Rae, Kumul Rae, Gobind Pershad Rae, Bhuwanee Pershad Rae, Rain Chunder Rac, Ram Nat Rae, Cashee Doss Rae, Cashee Chunder Rae, Ram Chunder Rae, and his young brother's name unknown, Ram Kishore deceased's wife and son, name unknown, and Calee Pershad Rae, (Defendants,) Respondents.

THIS suit was instituted by the plaintiffs to recover possession of 8 dhoons 12 cowrees of land, with mesne profits, in reversal of an

order of the criminal court passed under Regulation XV. 1824; laying their damages in a supplementary plaint at rupees 3,000. They represented that in kismuts Roopchurittur, Myejarra, Solparra, and Dukhin Bausgaree, there was a kharija talook of pergunnah Edilpore called Ramgunga and Ram Lochun Bose, the property of Kishen Chunder Surina, recorded in the collectorate at a jumma of Company's rupees 29, 3 annas, 7 pies: that in the year 1209 B. S., their ancestor, Sheeb Chunder Bhadooree, purchased from Kishen Chunder Surina two of the aforesaid kismuts, namely, Solparrah and Dukhin Bausgaree, bearing a jumma of Sicca rupees 16, 4 annas: that subsequently all the kismuts, excepting Dukhin Bausgaree were destroyed by the encroachments of the river, and as Kishen Chunder Surina did not pay the Government demand, they (plaintiffs) were obliged to liquidate the same themselves, continuing in possession of the remaining kismut Dukhin Bausgaree: that at this juncture the defendants, with a view of forcibly taking possession of the land in Dukhin Bausgaree, laid hold of their (plaintiffs') ryuts, and plundered their habitations: that an enquiry was instituted under Regulation XV. 1824, when the defendant Comul Kishen claimed the land in question as belonging to his sheekmee talook Ramanund Turkobaggis, mouzah Bausgaree, a "shikust pywust" of Ram Chunderpoor, calling it sometimes in his statement Dukhin Bausgaree, and the magistrate, notwithstanding the proprietary right of the plaintiffs, directed the land in dispute to be given up to the defendants under date the 14th March 1839, which order was confirmed by the sessions judge on the 15th July of the same year.

Comul Kishen Rae, Gobind Pershad Rae, Cashee Chunder Rae, and Kashee Dass Rae, denied the dispossession complained of, and claimed the land in dispute as appertaining to their property Huludhee, Toongchur, and Bausgaree, a "shikust pywust" of Ram Chunderpoor and other kismuts, consisting of 26 dhoons, 3 cowrees, 3 gundahs, 3 krants of land, purchased by their ancestor Gunga Dass Rae and Kistanund Rae in the name of Rama Nund Turkobaggis, by virtue of two kubalas in the year 1204 and 1208: that in the year 1219, on the occasion of a dispute with the auction purchaser of the whole pergunnah Edilpore, their possession was confirmed, first by Buddinat Rae ameen, in the year 1225, and subsequently by Joychunder Ghoo, ameen, under the orders of the civil court, who measured the land in the presence of Bholanat Bhadooree, the father of Calee Dass Bhadooree, and reported his proceedings, which were approved of, and they have been in uninterrupted possession for a period of 18 years.

The plaintiffs, in their replication, declared that the land claimed by the defendants as their property was in *Bausgaree*, not *Dukhin Bausgaree*, as their kubalas would establish: that the enquiries of the ameen and the order of the judge under Regulation VI. 1813, were entirely *ex parte* as regarded them (plaintiffs,) and although

the defendants on that occasion made use of the term *Dukhin Bausgaree*, yet in the decision of the judge Bausgaree was the word used, and it was the land of Bausgaree that Joy Chunder ameen was deputed to measure: they referred also to the quinquennial papers of the collectorate as proving the existence of the four kismuts mentioned by them in 1202, of which only *Dukhin Bausgaree* was remaining: that there was nothing on record relative to the enquiry of Buddinat ameen, which was founded merely on the verbal declaration of his mohurer, Mirtinjoy Mookerjea, and they insisted upon *Bausgaree* and *Dukhin Bausgaree* being two distinct places.

The former principal sudder ameen, Chunder Seekur Rae Chowdree, before whom the case first came, was of opinion that there were two distinct places, *Bausgaree* and *Dukhin Bausgaree*, referred to the quinquennial papers in support of the existence of the latter, and to the report of the darogah of thanah Boorechaut as proving *Dukhin Bausgaree* to belong to the plaintiffs, and, reversing the order of the criminal court passed under Regulation XV. 1824, he gave a decree for the plaintiffs.

A former judge, Mr. Tayler, before whom an appeal was preferred by Comul Kishen Rae, and others, the present respondents, remanded the case to the principal sudder ameen for the purpose of deputing an ameen to ascertain whether in reality *Bausgaree* and *Dukhin Bausgaree* were two distinct places, the revenue of which was paid separately, and to draw a map of the disputed ground with a statement of the possession of each party.

The principal sudder ameen, after deputing Ram Chunder ameen, said in his proceeding to have been approved of by both parties, recorded his opinion that *Dukhin Bausgaree* and *Bausgaree* were undoubtedly distinct places, that the defendants on a former occasion had been fined for not producing evidence in support of their claim: that their kubala indicated *Bausgaree*, not *Dukhin Bausgaree*; that in the judge's summary order, under Regulation VI. 1813, *Bausgaree* was awarded not *Dukhin Bausgaree*: that the occupancy of the plaintiffs in the land in dispute as well as their collection of the rents had been clearly established: he laid some stress upon the existence of a "khal" called "Bhadorce khal," and upon the fact of *Bausgaree*, a "shikust pywust" of Ram Chunderpore; being situated at some distance off, and, referring to a claim advanced by one Motceoolah for some portion of the land in support of which no kubala was produced, he gave a decree a second time in favor of the plaintiffs.

From this order, Comul Kishen Rae and others, and Kunhye Lall Tagore and Gopal Lall Tagore appealed on the following grounds: that *Bausgaree* and *Dukhin Bausgaree* were not two distinct kismuts: that the local enquiry ought to have been founded upon the chittahs of Joychunder Ghoo, ameen, prepared under the orders of the judge: that there were various inconsistencies in the

quinquennial papers adverse to the claim of the plaintiffs: that some of the *khas* land of the zemindar, who ought to have been made a defendant, had been decreed by the principal sudder ameen, the zemindar claiming the land in dispute with the exception of the 3 dhoons, 12 cowrees, 12 gundahs of land belonging to Comul Kishen Rae and others, respondents, according to his assertion.

Another judge, Mr. A. Reid, before whom the case was laid, considered the enquiry still incomplete, and directed as follows: "that a second ameen be deputed to the spot; having taken with him copies of the kuboolcuts entered by respondents, he will, by comparing the boundaries where expressed and the names of the jotedars, ascertain to what lands they relate, their extent, and whether situated within the limits of the *plot* generally called Dukhin Bausgaree; the principal sudder ameen will also call for his kubala from Motecoollah Ozurdar, and then through the ameen ascertain to what land it refers, its extent, and whether it is a part of the kharija talook of the plaintiffs; and the ameen will also take with him the chittahs of Joychunder Ghoo, ameen, and ascertain precisely the site of the 3 d., 12 c., 12 g., said to have been measured by him as in the occupancy of defendants, whether it is within the limits of Dukhin Bausgaree or not, and has come down to the possession of the defendants nevertheless; the ameen will report what amount of land will remain in the possession of plaintiffs in excess of the said 3 d., 12 c., 12 g., and of the 4 canes sold to Motecoollah; and the principal sudder ameen will also admit the applicants in case No. 184, to enter proof to the fact that their ancestor Mohunec Mohun Tagore, or the former proprietors of the pergunnah, did ever receive the rents of any portion of the lands claimed by plaintiffs, as belonging to Dukhin Bausgaree; and it will be necessary to look at these proofs with great caution."

The present principal sudder ameen, Moulvee Mahomed Kulleem, after deputing another ameen, and calling for the proofs noticed by the judge, recorded his opinion that the claim of the plaintiffs was untenable on several grounds: first, it was clear from a kubala, dated the 17th Maugh 1209, filed by Motecoollah Ozurdar, that the ancestors of the plaintiffs sold 4 c. 8 g. of land of his talook in kismut Dukhin Bausgaree to Deedaroolah, the ancestor of Motecoollah, and that there were no signs of any land belonging to the plaintiffs in Dukhin Bausgaree: that from the enquiries of Fukeeroolah, ameen, 5 d., 11 c., 13 g., 2 c., $\frac{1}{2}$ kt. of land were ascertained to exist as described in the boundary recorded by the plaintiffs, of which 3 d., 11 c., 13 g., 2 c. $\frac{1}{2}$ kt. were, in accordance with the chittas of Joychunder Ghoo, ameen, connected with the land in the possession of Comul Kishen Rae and others, and 5 c., 2 g., 2 c., 2 kt. of land sold to Deedaroolah in the possession of Motecoollah in Dukhin Bausgaree, and 1 d., 6 c., 7 g., 3 c., in the possession of Gopal Lall Tagore, the auction purchaser of pergunnah Edilpore, as his khass

land: that there was no land connected with the kubooleuts of the plaintiffs within the boundary described by them to be found: that he had reason to suspect the genuineness of the chittas, chellans, and kubooleuts filed by the plaintiffs in the case under Regulation XV. 1824, from their being written apparently with fresh ink on old paper, and he alluded to the quinquennial papers not bearing the signature of the collector or any other officer, and the difference in the boundary of the plaint and in those papers, and also between the jumma inserted in them and the kubalas of the plaintiffs: that it appeared from a decision of the civil court under Regulation VI. 1813, a copy of the chittas and proceedings of Joychunder Ghoo, ameen, and the village papers filed by Buddinat ameen, that 3 d., 12 c., 12 g. of land on account of talook Ramanund Turkobaggis had been in the occupancy of Kistanund Rae and others, the ancestors of the defendants, since the year 1228, leaving 4 c. 8 g. as the purchase of Deedaroolah, the ancestor of Motecoollah, and 1 d., 6 c., 7 g., 3 c. in the possession of Gopal Lall Tagore, whom the plaintiffs had not named as a defendant, for which and the aforesaid reasons he dismissed their claim.

From this order the plaintiffs appealed, and, after repeating their former statements, alluded to the inability of the defendants to adduce any proof on their behalf, and to their (plaintiffs) having twice had a decree in their favor, and observed that although they may have disposed of 4 canes of land that sale did not affect the remainder of the land; that the discrepancy noticed in the quinquennial papers and boundary in their plaint was of no material importance; that the papers were merely filed to show the existence of Dukhin Bausgaree, and had nothing to do with the jumma at all: that the principal sudder ameen had admitted the sale of 4 canes of land to Deedaroolah, and yet suspected their original kubala; that the quinquennial papers, though not bearing the signature of any Government officer, were yet received in evidence; and as Gopal Lall Tagore had nothing to do with their kharija talook, or the case under Regulation XV. 1824, there was no necessity for making him a defendant: that they had great objections to the investigation of the ameen last deputed, who was not at all a fit person, and had acted entirely in accordance with the wishes of the zemindar of Edilpore.

As neither of the local enquiries had been productive of satisfactory results, it was considered advisable, to prevent the possibility of future objections, to depute the moonsiff of Mendigunge near whose jurisdiction the land in dispute was situated, to ascertain the following points: whether the land in dispute was in reality the same as was measured by Joychunder Ghoo, ameen, and whether there were two places as Bausgaree and Dukhin Bausgaree, and, if so, to which place the land measured by Joychunder Ghoo, belonged, and in whose possession and from what date the land in dispute had

remained, and also to report the locality of the land mentioned in the quinquennial papers. In conformity with these directions the moonsiff went to the spot, and reported that the land in dispute mentioned in the plaint corresponded with the land measured by Joychunder Ghoo, ameen, with the exception of three or four plots: that Bausgaree and Dukhin Bausgaree were distinct places, and that the land measured by Joychunder Ghoo belonged to Dukhin Bausgaree: that the respondents, Comul Kishen Rae and others, had been in possession of part of the disputed land according to the chittas of that ameen for ten or eleven years, and Deedaroolah by virtue of his purchase, and after him Mynoollah talookdar of 4 c. 8 g. of land for a period of forty years, and that the rest of the land described by the appellants had been in the occupancy of the zemindar of pergunnah Edilpore for eight or nine years, prior to which the appellants were in possession, and that in the quinquennial papers filed by the appellants the land of other parties was comprised besides their talook land, although sundry ryuts had produced dakhilas to show the payment of their rent to the zemindar prior to 1245, he had returned them as unworthy of credit.

The respondents, Comul Kishen Rae and others, alluded to the measurement papers of Joychunder Ghoo, ameen, being tested by the moonsiff and corroborating their claim; and could not comprehend how the moonsiff nevertheless considered them to have been in possession of part of the disputed land for ten or eleven years only, for the enquiry of Buddinat, ameen, which took place in 1225, and the measurement of Joychunder Ghoo in 1228, prove their possession to have been long anterior to the time described by the moonsiff: they objected to the moonsiff returning the dakhilas, which were produced before him as being attested on oath, and remarked upon the appellants concealing the former sale of 4 cowrees 8 gundahs of the land in dispute to Deedaroolah, the ancestor of Mynoollah, and their omission to include the zemindar of Edilpore as a defendant, and quoted Construction No. 1368 and the case of Brijnath, petitioner, decided by the Sudder Court on the 21st September 1847, as a ground for a nonsuit. In refutation of these remarks the appellants insisted that they could not be injured by the measurement of Joychunder Ghoo, which was said moreover to have been conducted in the month of Bhadoon, a time when the district was always under water, and which referred to a dispute between the respondents and the zemindar in which they (appellants) had no concern; that the respondents, having failed to produce any proof in the first instance before the former principal sudder ameen, and having been fined for the omission, had recourse to the assistance of the zemindar to accomplish their designs.

The zemindar gave a petition much to the same purport as that of the respondents, and denied the insinuation thrown out by the appellants of his having colluded with the respondents, between

whom and himself there had been constant disputes since he had purchased the pergunnah.

The only points connected with the enquiry of the moonsiff upon which there seems to be no doubt, are the possession of Deedar-oollah, and, after him, of Mynoollah, talookdar of the land purchased from the ancestor of the appellants, the quinquennial papers containing the land of other parties, besides the talook land of the appellants, and the fact of Bausgaree and Dukhin Bausgaree being distinct places: on the other points noticed by the moonsiff his opinion does not appear to have been formed upon sufficiently clear data, either as regards the comparing the land in dispute with the measurement chittas of Joychunder Ghoo or the fact of the land in those chittas belonging to Dukhin Bausgaree, there being no indication in the papers of enquiry how the land measured formerly by Joychunder Ghoo, was found to correspond with the land in dispute, but merely the remark that the land was pointed out by certain parties; and as regards the possession of the respondents and the zemindar of pergunnah Edilpore and the anterior possession of the appellants, I can only suppose that the moonsiff, after recording the little confidence he had in the witnesses, decided the fact of possession alluded to from what he saw, and as being borne out by the papers. It must be remembered that the appellants have all along from the very first contended that the purchase of the respondents was confined to Bausgaree by virtue of their kubalas, and had no connection with Dukhin Bausgaree, and they declared also that the measurement of Joychunder Ghoo was effected in Bausgaree: the respondents on the other hand, and latterly the auction purchaser of pergunnah Edilpore, maintained their claim upon the strength of Joychunder's measurement, which they declared was connected with the land in dispute, and they positively denied the existence of two distinct places such as Bausgaree and Dukhin Bausgaree, and wished to have it believed that the word Dukhin was merely an appellation given to the south part of the same land. On referring to the kubala of the appellants, dated the 11th Kartikh 1209, the canoongoe mouzawaree papers, dated the 7th August 1820, the list of putwarees given in by the zemindars, the local enquiry of Ram Chunder ameen corroborated by the recent investigation of the moonsiff, there is no doubt whatever in my mind that Bausgaree and Dukhin Bausgaree were two distinct places: the kubala of the appellants distinctly showing the existence of Dukhin Bausgaree in connection with kismut Solopara, with which were formerly kismuts Roopchuritter and Myejarra, and one of the kubalas of the respondents (copy of which, be it remembered, was filed by the appellants) showing Bausgaree to be a shikust pywust of Ram Chunderpore in connection with kismut Huleemdee, Toongchur, and other kismuts, so that the assertion of the respondents and the zemindar of Edilpore on this point is quite untenable. With respect to the enquiry

said to have been made by Buddinat ameen, no papers are on record, and there appears to have been merely a verbal report from his mohurer to the effect that Toongchur and other kismuts belonged to talook Ramanund Turkobaggis: in the roobakary of the civil court, dated the 3rd April 1820, on which occasion Ramjye and others were petitioners *versus* Mohunee Mohun Tagore, and in the final proceeding and chittas of Joychunder Ghoo there is no mention of *Dukhin* Bausgaroe, but *Bausgaroe* is distinctly noted, and in the same ameen's "khuteean" of the land Bausgaroe is recorded as a "shikust pywust" of Ram Chunderpore: these papers, moreover, on which the respondents and the zemindar of pergunnah Edilpore have laid so much stress, bear no signature nor any sign of approval by the court, nor is it any where apparent that the measurement took place as alleged in the presence of Bholanath Bhadoree, the father of Caleedas Bhadoree: it is difficult therefore to discover how the moonsiff considered the land measured by Joychunder Ghoo, to appertain to *Dukhin* Bausgaroe.

In a case of this nature the evidence produced in the first instance, whether oral or documentary, is always the most satisfactory, and although the present principal sudder ameen has considered the documents filed by the appellants in the case under Regulation XV. 1824, to be suspicious in appearance, they never were suspected before, nor can I observe any reason for suspecting them now, and the respondents have never thought of impugning their validity on the ground of fabrication, and they show indication of the possession of the appellants in the land in dispute prior to the institution of the suit under Regulation XV. 1824. On looking at the decision of the joint magistrate under that Regulation, I find it recorded that Sudderooddeen gomashtha denied being in the service of the appellants, in opposition to the evidence of some of their witnesses, but it must be borne in mind that Sudderooddeen was cited as a witness not by the appellants, but by the respondents. I cannot either agree with the principal sudder ameen in thinking that the possession of the zemindar of pergunnah Edilpore of some portion of the disputed land is at all satisfactorily established, for, from the institution of the suit under Regulation XV. 1824, in 1838, to the year 1843, when this case was remanded by the judge, the zemindar preferred no objections, and the claim of the appellants with reference to the boundary of the land has remained unaltered: I can perceive no valid grounds therefore for the zemindar coming forward all at once supporting the respondents in their demand, and claiming the rest of the disputed land as his own property, nor was there any necessity to include him as a defendant, for the appellants were merely concerned with those who were opposed to them in the suit under Regulation XV. 1824; nor do I perceive the applicability of Construction No. 1368, and the precedent quoted by the respondents. The failure of the respondents to adduce proofs, as required by the former principal sudder ameen and

the imposition of a fine in consequence, and their subsequent conduct in this case, certainly warrant the inference, as hinted by the appellants, that they have, with a view to strengthen their own claims, induced the zemindar to support them in the manner described, and it is worthy of attention that the only documentary evidence adduced by the zemindar before the present principal sudder ameen consisted of two kuboolents and three doul bundo-bust papers and referred to *Bausgarce*.

I am of opinion, for the reasons abovementioned, that the claim of the appellants for the land in dispute described in the boundary recorded in their plaint is good, excepting for the amount comprised in the kubala of Deedaroollah. The appeal heretofore is decreed on those terms, the order of the principal sudder ameen reversed, and the appellants, after the deduction just noticed, will receive possession of 8 d., 7 c., 12 g. of land in the boundary aforesaid, and mesne profits from the date of dispossession, namely, Bysakh 1246, with interest from the date of the amount being ascertained, and the respondents Comul Kishen Rae and others will pay their own and the costs of the appellants in both courts, and the zemindar of pergunnah Edilpore will defray his own costs.

THE 25TH MARCH 1850.

No. 56 of 1847.

Appeal from the decision of Moulree Mahomed Kulleem, Principal Sudder Ameen, dated the 5th June 1847.

Bishnat Raie, (Plaintiff,) Appellant,

versus

Dhonye Lushker, (Defendant,) Respondent.

THIS suit was instituted by the plaintiff to recover the sum of rupees 596, principal and interest, due from the defendant on account of rupees 298, borrowed on a bond, dated the 11th Phalgun 1244, which was to be payable in the month of Assin 1245.

Dhonye Lushkur denied the debt, or the ability of the plaintiff to lend money, and declared that the suit had been instituted from spiteful motives; that on the 29th Kartikh 1252, in consequence of the threatening attitude assumed by the plaintiff towards him, he (defendant) gave a petition to the magistrate, who bound down the plaintiff under recognizances to keep the peace; that a false suit, under Regulation VII. 1799, was then preferred by the plaintiff in the Noacally district, and at the time he (defendant) came to Burrisaul to adopt measures connected with this present action, he was apprehended and carried off to the Noacally district; that his son deposited in the collectorate the amount claimed in the summary suit, and in consequence of an application to the collector and the

magistrate, as well as a petition to the deputy magistrate at Noacally, for his release, the plaintiff caused another complaint to be brought against him of dispossessing the piada; that both these suits were dismissed by the uncovenanted deputy collector of Noacally, and the amount in deposit returned to him. *

The plaintiff, in his replication, alluded to his being a mahajun, and in the habit of lending money, and denied the allegations mentioned by the defendant.

The principal sudder ameen suspected the bond from its appearance, and with reference to the discrepancy in the evidence of the witnesses to the bond, the absence of the writer of the document, the fact of recognizances having been taken from the plaintiff in consequence of a petition from the defendant, the falsity of the suits instituted against him by the plaintiff in Noacally, and the enmity shown to have existed for ten or twelve years between the parties, he discredited the claim and dismissed it.

The appellant reiterated his former pleas, and observed that, if fraud was intended, it was not likely he should have resorted to a person in the interest of the defendant to write the bond, and that its validity could not be affected by any petition which the defendant might subsequently make.

The bond was said to be made payable in the month of Assin 1245, and taking into consideration the dates of the disputes between the parties and the unfounded suits brought against the respondent in the Noacally district, and the date of this present action, it is impossible not to suspect the whole transaction, and that this suit has been got up entirely out of spite. The order of the principal sudder ameen is therefore confirmed, and the appeal dismissed, with costs.

THE 25TH MARCH 1850.

No. 62 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 18th August 1847.

T. P. D'Silva and Anthony D'Silva, (Defendants,) Appellants,

versus

Doya Muyee Chowdrain, wife of Punchanund Rae, deceased, (Plaintiff,) and Mrs. Louisa D'Silva, wife of Domingo Manuel D'Silva, deceased, mother and guardian of Domingo Manuel Anthony D'Silva, minor, and Mohun Chunder Ghoo, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff to recover from the defendants the sum of rupees 4,617, principal and interest, after deducting rupees 200 as paid, being on account of a loan of rupees 3,000, contracted to her husband by Domingo Manuel D'Silva, husband of

Mrs. Louisa D'Silva, and his naib, Mohun Chunder Ghoo, on the 21st Jyte 1248, to rescue from sale in satisfaction of a decree of court five different estates, two of which were recorded as the property of Domingo D'Silva, two of Manuel D'Silva, and one of Pedro, Domingo, Manuel, John, Thomas, Joseph, Matthew and Anthony D'Silva.

Anthony D'Silva denied all connection with the case, and declared that he was a minor at the time the debt was said to have been incurred, that he had large claims upon his executor which were not yet satisfied, and he could not be responsible by law for any debt his executor may have contracted.

The replication of the plaintiff was to the effect that the executor borrowed the money not to injure but to benefit the minors.

Thomas Paul D'Silva's reply was to the same purport as that of Anthony D'Silva.

Mrs. Louisa D'Silva admitted the debt, which she declared was incurred upon the responsibility of them all.

Mohun Chunder Ghoo's reply was similar to that of Mrs. D'Silva, with addition that he merely signed the bond as naib, and had no personal connection in the transaction.

The principal sudder ameen had no doubt of the contraction of the loan by Domingo Manuel D'Silva and his naib Mohun Chunder Ghoo, and as no proof was adduced of the debt having been incurred for the benefit of the other defendants, he gave a decree against Mrs. Louisa D'Silva, wife of Domingo Manuel D'Silva, and Mohun Chunder Ghoo, his naib, who were to pay the principal sum, rupees 3,000, and interest to the date of suit, rupees 1,617, and further interest to the day prior to the decree, rupees 415, in all rupees 5,032, and costs, releasing the other defendants, who were to pay their own costs.

The appellants are dissatisfied with this order, because they assert they were unnecessarily included as defendants in the case.

There is nothing in the papers or in the principal sudder ameen's decree to show that they were unjustly sued; indeed, considering the connection between the parties concerned, and that the contractor of the loan was the executor of the appellants and according to the plaintiff's belief borrowed the money for the benefit of the minors as well as his own, the plaint would have been pronounced defective if the appellants, who had arrived at their majority, had not been named as defendants. I see no reason therefore to disturb the decision of the principal sudder, which is confirmed, and the appeal dismissed, with costs.

ZILLAH BEERBHOOM.

PRESENT: F. CARDEW, ESQ., JUDGE.

THE 8TH MARCH 1850.

Case No. 4 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Amduhra, Gholam Buttool, November 12th, 1849.

Ram Dewasee and Dripumuyee Dasya, (Defendants,) Appellants,
versus

Sheikh Asumtoolla and Khoodoo Bibi, (Plaintiffs,) Respondents.

THIS suit was instituted on the 12th March 1849, to recover the sum of Company's rupees 60-1, principal and interest, on a bond, alleged to have been executed by the defendants in the plaintiffs' favor, under date the 19th Bhadro 1252 B. S.

The defendants, in answer, denied the claim *in toto*, and pleaded that it had been brought forward through enmity, as a means of breaking up a retail shop they kept in the village similar to one kept by the plaintiffs themselves.

The defendant, Ram Dewasee, urged that he could read and write, and consequently, if the bond were true, it would bear his signature.

The plaintiffs, in their reply, denied the fact in the answer.

The moonsiff decreed the suit in favor of the plaintiffs, recording that execution of the bond was proved by three subscribing witnesses, and that the defendants had failed to establish their pleas: they had produced only one witness for examination; two other witnesses were in attendance on the 11th September, but they absented themselves without having been examined; and the vakeels of both parties stated that they waited for nothing further to complete the case.

The moonsiff does not state why the two witnesses were not examined when they were in attendance; the 11th September was the day preceding the close of the courts for the Dusserah vacation, the appellants say, on which account the witnesses in the press of other business were unattended to, and this may probably have been the case; but whatever the reason may be, the witnesses having been duly summoned, the moonsiff should not have proceeded with the case without first explicitly calling upon the defendants' vakeel to satisfy him by evidence on oath that the witnesses are

material to the cause, agreeably to the rule prescribed in Construction No. 1126; and as the moonsiff failed to observe that rule, I reverse his decision as being incomplete, and remand the case for re-trial.

THE 8TH MARCH 1850.

Case No. 6 of 1850.

Regular Appeal from a decision passed by the late Moonsiff of Doobraj-pore, Moulvee Atta Allee, December 23rd, 1849.

Krishto Mundul, (Defendant,) Appellant,

versus

Shama Soondree Dasya, (Plaintiff,) Respondent.

THIS suit was instituted on the 9th July 1846, to recover the sum of Company's rupees 74-6-9, principal and interest, on a bond dated the 17th Bhadro 1250 B. S., executed by the defendant in favor of Sreeram Dee, deceased, to whose estate the plaintiff has succeeded as his widow and heir.

The defendant acknowledged the bond, and pleaded that he had repaid in produce and cash the sum of rupees 55-12.

The moonsiff decreed the suit in favor of the plaintiff, on the ground that the defendant had failed to adduce proof in support of his plea.

I find that proofs were called for from the defendant on the 13th October 1849, from which date he took no steps in furtherance of his plea; and no sufficient reason for the default having been assigned in the petition of appeal, I confirm the decision under Clause 3, Section 16, Regulation V. 1831.

THE 9TH MARCH 1850.

Case No. 7 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Soory, Koolodanund Mookurjea, December 10th, 1849.

Gour Das Byragee, (Defendant,) Appellant,

versus

Manik Chund Saha and Nund Lol Salooce, (Plaintiffs,) Respondents.

THIS suit was instituted on the 7th February 1849, to recover the sum of Company's rupees 51-10, principal and interest, on a bond, bearing date the 11th Asar 1255 B. S., alleged to have been executed by the defendant in favor of the plaintiff, Manik Chund Saha, in acknowledgment of a loan of 48 rupees; and the money having been actually advanced for the purpose of the loan by the

plaintiff, Nund Lol Salooee, it was requested in the plaint that the decree might be given in favor of the latter.

The defendant, in answer, denied the claim, and pleaded that the bond was taken from him by Manik Chund Saha, under whom he held the situation of gomashah, by force, on the pretence of his having occasioned loss in the performance of his duties.

The moonsiff decreed the amount of the claim, recording that the loan of the money and the voluntary execution of the bond by the defendant were proved by the evidence of three subscribing witnesses, and that the defendant had failed to adduce evidence in support of his answer; and being of opinion, on perusal of the record and petition of appeal, that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I confirm the same under Clause 3, Section 16, Regulation V. 1831.

THE 9TH MARCH 1850.

Case No. 10 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Oohkra,
Gobind Chund Chowdhree, December 10th, 1849.*

Rookneckanth Bukshee, (Defendant,) Appellant,

versus

Punalal Singh Baboo, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff on the 4th January 1849, to recover the sum of Company's rupees 7-4, as damages on account of injury caused to the crops of one beegah of paddy by the trespassing thereon of three buffalos belonging to the defendant, on the night of the 12th Agrahon 1255 B. S.

The defendant, in answer, pleaded not guilty, stating that his cowherd ought to have been made a defendant; that the injury to the crops was not caused by his buffalos, but by a cow belonging to another party; that the suit had been got up against him at the instigation of the talookdar, Dhurm Das Bukshee, with whom he was on bad terms; and that the claim would be found on enquiry to be utterly false.

The moonsiff was of opinion that there was no necessity to make the defendant's cowherd a party to the suit; and, considering the defendant's answer a mere denial of the claim, he called for proofs on the part of the plaintiff only, and, on the evidence produced by him, decreed the suit in his favor.

I concur with the moonsiff in opinion that it is not necessary to make the cowherd a party to the suit; but the defendant is clearly entitled to adduce evidence in refutation of the claim, and I accordingly reverse the decision as being at variance with Section 39, Regulation XXIII. 1814, and remand the suit for re-trial and decision *de novo*.

THE 9TH MARCH 1850.

Case No. 12 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Dhekkabaree, Neel Madhub Mookurjea, December 18th, 1849.

Sheikh Musulah-ooddeen, (Plaintiff,) Appellant,

versus

Sheikh Shahzad and others, (Defendants,) Respondents.

THIS suit was instituted on the 28th August 1848, to recover possession of one beegah five cottahs of land.

The parties submitted the decision of the matters in dispute to arbitrators, who gave an award in favor of the plaintiff; but the moonsiff set aside the award, without any objection being made against it by either of the parties, on the ground that it was not supported by the evidence.

This is clearly illegal. By the arbitration bonds executed by the parties agreeably to Section 5, Regulation XVI. 1793, they bound themselves to abide by the award and agreed that it be made a decree of the court; and it was incumbent on the moonsiff to pass a decree in conformity to the award, which could only be set aside on proof of gross corruption and partiality in the cause on the part of the arbitrators, as provided in Section 9 of the above regulation. I therefore reverse the moonsiff's decision, and send back the case for revision with reference to the foregoing remarks.

•THE 12TH MARCH 1850.

Case No. 8 of 1850.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulee Nijumul Huq, December 10th, 1849.

Syud Waris Alee and Syud Abdool Alee, (Plaintiffs,) Appellants,

versus

Nilachul Pal and Syud Shah Sudnoo Meean, (Defendants,) Respondents.

THIS suit was instituted by the plaintiffs as the heirs of Bandee Bibi, deceased, on the 21st May 1848, to recover the sum of Company's rupees 340-6-6, being the collection of a 3 annas, 11 gundahs, 1 cownie, and 1 krant share of mouzah Kurumkel, pergunnah Hureepore, with interest, for the years 1243 and 1244 B. S.

The plaintiffs stated that the collections of the abovementioned share of mouzah Kurumkel, belonging to Bandee Bibi, were made in the years in question by the defendant Nilachul Pal, who had been appointed gomashlah by Syud Shah Sudnoo Meean, another shareholder; that Nilachul Pal had never accounted for the money, and they therefore sued him and Sudnoo Meean jointly for the amount, at the rate of rupees 400 *per annum* on the entire estate.

The defendant, Sudnoo Meean, in answer, denied that he had any thing to do with the claim, or that he had given any authority to Nilachul Pal, to collect Bandee Bibi's share of the rents, that he should be made answerable.

The defendant, Nilachul Pal, in answer, stated that he collected the entire rents of the mehal, including Bandee Bibi's share, in the years of dispute, under the authority of Sudnoo Meean, and that he had paid the entire amount, namely, rupees 398-15-18, for each year, to Sudnoo Meean, under an acquittance bearing date the 8th Asar 1246 B. S.

On the 29th June 1849, the principal sudder ameen decreed the suit against the defendant, Nilachul Pal, releasing Sudnoo Meean from responsibility, on the grounds that it was proved that Nilachul Pal was appointed gomash-tah, as well on the part of the plaintiffs as of Sudnoo Meean, and that the acquittance produced by Nilachul Pal, though sworn to by three witnesses, was unworthy of confidence.

On appeal on the part of Nilachul Pal, the case was remanded to the lower court, under date the 29th October 1849, on the grounds that in disposing of the acquittance the principal sudder ameen was entering into and adjusting a dispute between co-defendants, contrary to the rules of practice; and he was directed to decide the case as between plaintiffs and defendants. See Decisions of this court for 1849, page 147.

The principal sudder ameen has accordingly revised the case, upholding his former judgment, save as regards the acquittance, on which he passed no opinion.

The plaintiffs now appeal from this decision, objecting to the release of Sudnoo Meean; but there is no proof on the record of liability on the part of Sudnoo Meean; on the contrary, the fact that Nilachul Pal collected the rents in the years of dispute as gomash-tah on the part of the plaintiff Waris Alee, is proved by the plaintiff's own witnesses. I therefore confirm the decision under Clause 3, Section 16, Regulation V. 1831.

THE 12TH MARCH 1850.

Case No. 14 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Dhekkabaree, Neel Madhub Mookurjea, December 15th, 1849.

Hurmohun Ghose Mundul, (Defendant,) Appellant,

versus

Khetro Munce Dasya, (Plaintiff,) Respondent.

THIS suit was instituted on the 1st February 1849, to recover the sum of Company's rupees 13-11, being the balance due on a bond, bearing date the 24th Poos 1249 B. S., executed by the defendant in favor of Blikiyakur Ghose, deceased, husband of the plaintiff.

The defendant acknowledged the bond, pleading that he had paid the deceased the amount due on it in full, under an acquittance, dated the 7th Bhadro 1252, and that the bond was not returned by the deceased on the pretence of its having been accidentally burnt.

The moonsiff, having no confidence in the evidence of the three witnesses produced by the defendant in support of the acquittance, (who were other than the witnesses to the bond,) on account of discrepancies in their evidence, disallowed the defendant's plea, and decreed the amount of claim in favor of the plaintiff; and being of opinion, on perusal of the record and petition of appeal, that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I confirm the same under Clause 3, Section 16, Regulation V. 1831.

THE 13TH MARCH 1850.

Case No. 5 of 1850.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nijumul Haq, December 5th, 1849.

Dwarkanauth Sirkar, Shama Churn Sirkar, and Jugunath Sirkar and others, (Plaintiffs,) Appellants,

versus

Bahadoor Alee Khan and others, (Defendants,) Respondents.

THIS suit, which involves a boundary dispute, came before me on appeal preferred on the part of the plaintiff, on the 17th May 1848, when it was remanded to the lower court for further investigation by a local enquiry. See Decisions of this court for 1848, page 16.

The disputed land, 120 beegahs in extent, was claimed by the plaintiffs (appellants) on the allegation that it was part and parcel of mouzah Maldiah belonging to their *mokurruree ghatwallce talook* Seema, and that the defendants dispossessed them thereof in the month of Agrahon 1252 B. S.

The defendants pleaded that the disputed land belonged to their *mokurruree mouzah* Doomdoomee, and that plaintiffs never had possession.

It is acknowledged by both parties that the western boundary of mouzah Doomdoomee, separating it from mouzah Maldiah, is a road leading from Luchoorace-dilhi to Salooka; and the point at issue involves the identity of this road, the plaintiffs claiming as the boundary a road passing between the same places to the eastward of the road pointed out by the defendants.

The result of the local enquiry instituted by the principal sudder ameen, under the orders of this court as indicated above, shows that the main and original road leading from Luchoorace-dilhi to Salooka is the one pointed out by the defendants, the road claimed by the plaintiffs as the boundary being a mere track recently formed by

sountals settled in Doomdoomee by the defendants themselves. The principal sudder ameen, therefore, in affirmation of his former decision, dismissed the suit, with costs, declaring the claim to be vexatious and groundless.

On perusal of the record and petition of appeal I can find no grounds for interference with this decision, which appears to be just and proper, and I therefore confirm the same under Clause 3, Section 16, Regulation V. 1831.

THE 14TH MARCH 1850.

Case No. 2 of 1850.

Regular Appeal from a decision passed by the late Moonsiff of Doobraj-pore, Moulree Atta Alee, November 12th, 1849.

Kenaram Gorain Mundul and Deenonath Gorain Mundul,
(Defendants,) Appellants,

versus

Mudhoosoodun Naik, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff as the *durputnee* and *se-putnee talookdar* of *mouzah* Gukooroor, on the 21st June 1848, to fix the rent payable on beegahs 69-4 of land.

The plaintiff stated that the defendants held in *mouzah* Gukooroor beegahs 69-4 of *mal* land, for which they had hitherto paid a rent of 96 rupees; that on the 26th Bysakh 1255, he served on them a notice, under Sections 9 and 10, Regulation V. 1812, for an enhanced rent to the amount of Sicca rupees 156, or Company's rupees 166-6, according to the pergunnah rates, but the defendants failed to enter into the engagements required.

The defendants, in answer, denied the service of the notice alleged to have been issued on the date set forth in the plaint, and stated that the plaintiff served on them a notice under date the 15th Bysakh 1254, the year preceding, agreeably to which they entered into engagements with him to pay rent on beegahs 49-15 of land at the rate of 96 rupees; that the rest of the lands in their possession (the particulars of which are given in the answer in detail) belonged to other parties, and was held by them (defendants) in subtenure, or on mortgage, &c.; that they held a tank, named Kudunee, rent-free, under a sunnud granted by the zenindar on the 12th Chyete 1245, prior to the sale of the talook in putnee, and which consequently was not liable to assessment; and they objected further that the plaintiff had omitted to record in the petition of plaint the boundaries of the lands, which prevented them from giving a distinct answer to the claim.

The plaintiff, in his reply, denied the facts in the answer, and stated that he would give the boundaries of the lands when the ameen shall have been deputed to measure and assess them.

The moonsiff, without making any preliminary enquiries in respect to the pleas entered in the answer, at once deputed an ameen, and on his report decreed to the plaintiff rent at the rate of rupees 130-7-5, with costs of suit.

The decision is altogether incomplete. The objections advanced by the defendants, as to the service of the notice and to their having entered into engagements for the land in 1254, have been entirely overlooked. Other objections to several parcels of land, amounting on the whole to beegahs 22-8-9, the moonsiff disallowed without enquiry, some because the alleged owners had not come forward to claim the same, and others because they had not been advanced in the answer, and this notwithstanding the objection raised in the answer in respect to the want of boundaries. The tank, named Kudumce, has been assessed without reason assigned, though the defendants produced a sunnud and three witnesses in support of their plea regarding it; and moreover the defendants have been saddled with the costs of suit to the heavy amount of rupees 251-1-9, including rupees 222-13 the expence of the ameen, who, it appears, was allowed eight months and a half to measure and assess only 65 beegahs of land.

I reverse the decision as being incomplete, and remand the case to the present moonsiff for further investigation and re-trial. He will in the first place dispose of the objections as to the service of the notice and to the defendants having already entered into engagements with the plaintiffs. Should those objections be disallowed, he will then investigate the objections to the several parcels of land referred to above, whether the same were advanced in the answer, or after the ameen's report was filed, and will pass a distinct decision on each. He will dispose of the plea regarding Kutlumce tank with reference to the precedent of the Sudder Dewanny Adawlut in the case of Huree Mohun Das and others, appellants, *versus* Prankishen Raee, respondent, recorded in the Select Reports for 1847, volume VII. page 384. He will then fix the rent of the lands found liable to assessment, according to the pergunnah rates; and finally he will consider the costs of suit. On this matter he will decide whether the ameen is entitled to the full salary of eight and a half months with reference to the quantity of work performed by him, and call upon him to refund any sum in excess of what may be considered a fair remuneration of his services, charging the residue, including the costs of the court, to the parties in just proportions.

THE 15TH MARCH 1850.

Case No. 9 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Amduhra, Gholam Buttool, December 13th, 1849.

Radhanath Kora, (Plaintiff,) Appellant,

versus

Radhasoondur Thakoor and others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff, a ryot of Hureerampore, on the 26th June 1848, to recover possession of 4 beegahs of *mal* land, from which he had been dispossessed by the defendants, ryots of a neighbouring mouzah, with *wasilaut* or mesne profits, from 1250 to 1254 B. S., at the rate of rupees 4-2-19 per annum.

The moonsiff decreed to the plaintiff possession of the land, but disallowed the *wasilaut* sued for, on the ground that "the plaintiff claimed not the value of the produce of land, but the rent, which could not be demanded by one ryot from another ryot, without a document of title."

The moonsiff has apparently misunderstood the matter. The plaintiff stated in his petition of plaint that *wasilaut* from the date of dispossession was justly due to him, but he had no means of proving what the actual produce of the land was; that he was, however, at least entitled to recover from the defendants the amount of the rent of the land, for which he was himself answerable to the talookdar of Hureerampore, and he therefore laid his claim on account of *wasilaut* at the value of the rent payable for lands of the same quality according to the *pergunnah* rate.

The defendant made no objection to this mode of valuation, and as it is perfectly reasonable, I do not see that any objection can be taken to it on the part of the court. I consequently remand the case to the moonsiff with directions to revise it, as far as regards the claim to *wasilaut*, with reference to the above remarks.

THE 15TH MARCH 1850.

Case No. 18 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Ookhra, Gobind Chund Chowdhree, December 10th, 1849.

Parbutee Dibya, (Defendant,) Appellant,

versus

Nuffur Chundur Bhuttacharje, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff on the 17th January 1849, to recover the sum of Company's rupees 10-10-6, being arrears of rent from 1249 to 1255 B. S., with interest, on 1 beegah 6 cottahs of *bruhmuttur* land alleged to have been engaged by Bukronath Bhuttacharje, deceased, husband of the defendant Parbutee Dibya, (appellant,) under a *kubooleut*, dated the 21st Maugh 1246.

The defendant (appellant) denied the claim *in toto*.

The moonsiff found the execution of the kubooleut by the deceased Bukronath Bhuttacharje satisfactorily proved; but as it appeared that the land had been occupied since the deceased's death by Hungsheshur Banurjya, the son-in-law of the defendant Parbuttee Dibya, he did not consider the latter liable for the rent beyond the term of the lease, which extended only to the close of 1249, and he therefore decreed against her, as being in possession of the deceased's estate, the rent of that year only, with interest and proportionate costs; and being of opinion, on perusal of the record and petition of appeal, that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I confirm the same, under Clause 3, Section 16, Regulation V. 1831.

THE 26TH MARCH 1850.

Case No. 22 of 1850.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulree Nujumul Huq, December 27th, 1849.

Puresh Acharje and others, (Defendants,) Appellants,

versus

Lala Doorga Purshad, successor by purchase to Fuzul Hoosen and others, (Plaintiffs,) Respondents.

THIS suit, which was instituted to recover the sum of Company's rupees 402-6-5, mesne profits with interest on a 9 annas share of mouzali Muheshdal, for the years 1234, 1235, and 1236, 1240, and 1241 B. S., came before me in appeal on the 30th May 1849, when it was remanded to the lower court for re-trial, because the principal sudder ameen had omitted to dispose of a plea founded on the statute of limitations. See Decisions of this court for 1849, page 63.

The principal sudder ameen has now admitted the plea, and decreed to the plaintiff the sum of rupees 72-3, as the mesne profits of 6 annas 15 gundahs share of the mouzali for the years 1240 and 1241, the claim to which was not affected by the law of limitations, agreeably to a separate account.

I regret to be obliged to remand the case a second time for re-trial. The defendants (appellants,) in their answer to the petition of plaint, acknowledged that they were in possession of the share in the years in question, but pleaded that it was held by them in farm in liquidation of a sum of rupees 401, borrowed by the plaintiffs' ancestor, Zahir Alee; and the principal sudder ameen has now taken no notice of this plea, further than recording it in his judgment as having been advanced in the answer; and on referring to the record of the suit I find that no proceeding was held under Section 10, Regulation XXVI. of 1814, in consequence apparently

of the case having been referred to arbitrators; but the omission was quite irregular. Moreover, the separate account, agreeably to which the sum decreed is said to have been awarded, is not forthcoming.

The decision is therefore altogether incomplete, and I send back the case to the lower court to be proceeded with *ab initio*.

THE 26TH MARCH 1850.

Case No. 25 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Amduhra, Gholam Buttool, December 28th 1849.

Doorga Narayun Rae, (Defendant,) Appellant,

versus

Bindrabun Race Chowdhree, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff, on the 31st March 1849, to set aside an order passed by the collector of Beerbhoom, on the 15th February 1849, awarding against him in favor of the defendant (appellant,) a commissioner appointed under Act I. of 1839, for the sale of distrained property, ten *per centum* on a claim for rent amounting to rupees 342-7-10, to recover which the plaintiff's property had been distrained under Regulation V. 1812, by the farmer of $4\frac{1}{2}$ annas share of mouzah Paunch-sonwa.

The plaintiff objected to the collector's award, on the ground that no sale had taken place, he having deposited the amount of claim in the collector's office; and in support of his position he quoted Section 2, Act I. of 1839, Section 52, Regulation XXIII. 1814, Section 5, Regulation VII. 1799, Section 11, Regulation XVII. 1793, and the Circular Order of the Sudder Dewanny Adawlut, dated the 13th January 1837, stating that he brought these rules to the collector's notice by petition, which the collector rejected.

The defendant (appellant) in answer, stated that though no sale took place, he issued the proclamation, deputed a peon to the spot, and did all that was required of him short of proceeding to the actual sale, and he contended therefore that he was entitled to his commission under the spirit of the regulations quoted.

The moonsiff decided that as no sale took place the defendant was not entitled to any commission, and he consequently decreed the suit to the plaintiff with full costs.

By Construction No. 714 passed on Section 5, Regulation VII. 1799, but which is equally applicable to the new law, Act I. of 1839, it has been ruled that the seller of distrained property is entitled to be reimbursed his expenses actually and necessarily incurred, though no sale take place. This rule, which should have guided the moonsiff in his decision, has been overlooked by him, and I therefore reverse the decision as being illegal, and remand the case

to the lower court in order that it may be disposed of according to law.

THE 26TH MARCH 1850.

Case No. 26 of 1850.

Regular Appeal from a decision passed by the Moonsiff of Anduhra, Gholam Buttool, December 28th, 1849.

Doorga Narayun Racee, (Defendant,) Appellant,

versus

Bindrabun Race Chowdhree, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff on the 31st March 1849, to set aside an order passed by the collector of Beerbhoom on the 15th February 1849, awarding against him in favor of the defendant (appellant,) a commissioner appointed under Act I. of 1839 for the sale of distrained property, ten *per centum* on a claim for rent amounting to rupees 57-14-4, to recover which the plaintiff's property had been distrained under Regulation V. 1812, by the farmer of $4\frac{1}{2}$ annas share of mouzah Paunch-sonwa.

The pleadings of the parties and the decision of the moonsiff are similar to those recorded under the preceding number, and I reverse the decision, and remand the case to the lower court on the same grounds.

THE 27TH MARCH 1850.

Case No. 208 of 1849.

Regular Appeal from a decision passed by the Moonsiff of Kundera, Mirza Ushkuree Fikrut, August 28th, 1849.

Etee Khan, Sheikh Amlah, Sheikh Subroo, Sheikh Bugloo, and Sheikh Emanut, (Defendants,) Appellants,

versus

Sheikh Khoda-newaz, (Plaintiff,) Respondent.

THIS suit was instituted on the 20th May 1849, corresponding with the 17th Jeth 1256 B. S., to recover damages to the amount of rupees 60, for assault and abusive language.

The plaintiff stated that the defendants had been employed by him as laborers to clear out a tank; that, on the 10th Jeth 1256, he called them to his house and directed them to smooth off and measure the work with the view to an adjustment of accounts, but they refused to do so and made unreasonable demands, and, these not having been complied with, they abused him in an unbecoming manner, seized him by the hair and dishonored him.

The defendants, in answer, pleaded not guilty, stating that they went to the plaintiff's on the date in question to demand their wages,

which the plaintiff refused to give; that the defendant Sheikh Sub-roo remonstrated with him, telling him that his withholding their wages was not the work of such a respectable man as he is, upon which the plaintiff, with the assistance of his servants, caught him (Sheikh Shubroo) by the throat and beat him with shoes; that he (Sheikh Shubroo) was about to lay a complaint before the deputy magistrate at Cutwa for the assault, and the plaintiff anticipated him by bringing this action. They denied that they had assaulted and abused the plaintiff.

The moonsiff recorded in his decision that the defendants had produced no proof in support of their defence, though proof was duly called for from them on the 23rd July; that four witnesses examined on the part of the plaintiff proved the charge against the defendants (appellants); that the charge was a heavy one, but as the defendants' means were small, he awarded against them the mitigated damages of 20 rupees.

The defendants, in the reasons of appeal, explain that they were unable to adduce proof in the lower court in consequence of their having been apprehended on the 16th July 1849, by the assistant superintendent for the suppression of thuggee, by whom they were detained till the 10th September, and this statement is confirmed by a proceeding of that officer, dated the 2nd instant, in answer to a reference on the subject from this court. This circumstance entitles the defendants to a re-trial of the case, for they could not be expected to defend the action when under restraint. But exclusive of that the moonsiff's decision is unsatisfactory *per se*, on account of its being recorded in too general terms. The charge brought by the plaintiff is, I find, not supported by the evidence to its full extent, the witnesses only deposed to that part of it involving abusive language, and the moonsiff should have noticed this, and have ascertained and recorded how the quarrel commenced and who was the aggressor, which is not shown by the record. I therefore reverse the decision as being incomplete, and remand the case to the moonsiff, with directions to allow the defendants to adduce evidence in support of their answer, and to re-try the case with reference to the above remarks.

THE 28TH MARCH 1850.

Case No. 33 of 1850.

*Regular Appeal from a decision passed by the Moonsiff of Ookhra,
Govind Chund Chowdhree, December 26th, 1849.*

Radha Kanth Sirkar and Lukhee Nurayun Sirkar, (Defendants,)
Appellants,

versus

Ram Nurayun Sham, Sonatun Naik, Nuffur Sham, and Kulganee
Churn Ghosal, (Plaintiffs,) Respondents.

THIS suit was instituted to recover the sum of Company's rupees 126, the value of brushwood purchased by the parties in joint

parceny in mouzali Bonshee, which the defendants are alleged to have appropriated without accounting to the plaintiffs for their share.

On the 29th May 1849, the moonsiff decreed against Radha Kanth Sirkar, Lukhee Nurayun Sirkar, (the present appellants,) and Ram Nurayun jointly, the sum of Company's rupces 24-14-9, with proportionate costs, on the ground of the evidence of a defendant named Gyaram Mundul, by which the parties agreed to abide.

On the 11th September 1849, on appeal preferred by the said Radha Kanth Sirkar, Lukhee Nurayun Sirkar, and Ram Nurayun Sirkar, the above decision was confirmed in respect to the two former, who had agreed to abide by the evidence of Gyaram Mundul, but there being no proof on the record that Ram Nurayun Sirkar had consented to that mode of trial, the suit was remanded to the moonsiff with directions to pass a legal decision in his case. See Decisions of this court for 1849, page 144.

Subsequently the defendant Ram Nurayun Sirkar died, and the moonsiff, considering him liable from the general evidence of the case, to the extent of one-third of the sum originally awarded against the three defendants jointly, now amended his decision by decreeing against the two surviving defendants (the present appellants) two-thirds of the said sum on their own account, and one-third on account of their being the heirs of the deceased Ram Nurayun Sirkar in possession of his estate.

I observe that by the moonsiff's former decision, which was confirmed by this court in respect to the present appellants, the latter were each and severally answerable to the plaintiffs to the full extent of the sum awarded, I therefore see no reason for interference with the present decision, which is objected to on the ground that a third share ought to be awarded against the estate of the deceased, and I accordingly reject the appeal under the provisions of Clause 3, Section 16, Regulation V. 1831.

ZILLAH BHAUGULPORE.

PRESENT: W. S. ALEXANDER, Esq., JUDGE.

THE 8TH MARCH 1850.

No. 74 of 1849.

Appeal from the decision of Baboo Kisto Chunder Chowdoory, Moonsiff of Rajmehal.

Mr. C. H. Barnes, (Plaintiff,) Appellant,
versus

Bundoo Ally and others, (Defendants,) Respondents.

CLAIM, bonded debt: instituted 16th May 1848, decided 30th March 1849.

This was an action on a bond for 69 rupees, 8 annas, with interest. The defendants denied the obligation, admitting that there were certain transactions between them and the plaintiff on account of a farm.

The moonsiff dismissed the claim, because two of the defendants' names were not mentioned in the bond, and the evidence showed that they were the parties who received the money. The appellant preferred an appeal from this decision, requesting that the account book of the factory might be examined in proof of the claim.

A summons was issued for the respondents to attend.

JUDGMENT.

I see no grounds for interfering with the decision of the lower court in this case. The appellant has acted, I have no doubt, in good faith in the transaction. But if the agents, who manage his affairs, conduct them so loosely as to pay the money over to parties whose names are not entered in the instrument, and have it witnessed so carelessly that none of the witnesses agree in the same story, the fault must lie at their door, and not with the courts who dismiss the claim. Order accordingly, with costs.

THE 12TH MARCH 1850.

No. 5 of 1848.

Appeal from the decision of Moulvee Allee Buksh, late Sudder Ameen of Monghyr.

Kurrum Singh and others, (Plaintiffs,) Appellants,
versus

Government, Golam Allee, and others, (Defendants,) Respondents.

To obtain possession of certain lands in mouzah Issapore and to have their names registered in the books of the collector of Monghyr: instituted 31st March 1847, decided 25th February 1848.

The plaint states that, on the 13th Maugh 1210 F. S., Gunput Rae and others, ancestors of the plaintiffs, purchased 37 beegahs and 10 cottahs of rent-free lands, situate in mouzah Issapore, and again on the 12th Aughun 1214 F. S., a further purchase of 12 beegahs and 10 cottahs was made: for these purchases the plaintiffs hold deeds of sale, obtained from the vendors, who are now dead, leaving heirs surviving them. In the year 1839 these lands were resumed by the Government, and a settlement for them was made with one Motee Singh, subsequently the settlement was set aside, and another was effected with Golam Allee, and another which was confirmed by the revenue authorities. The plaintiffs, therefore, sue for possession of 49 beegahs 11 cottahs of land with mesne profits, and that the collector be directed to make a settlement with them in the place of the defendants Golam Allee and others.

The answer tendered by the vakeel of Government is to the following effect. That the institution of the present suit is contrary to Clause 2, Section 23, and Section 31, Regulation VII. of 1822, and Circular Orders of the 18th August 1837. The mouzah of Issapore was attached and settled under Regulations VII. of 1822 and IX. of 1825. On the 14th April 1838 a proclamation was issued, calling upon all parties connected with the above mouzah to appear within one month and produce their papers under the penalty of having their claims rejected should they neglect this notice. The plaintiff, Kurrum Singh, was served with a copy of the decree in favor of Government in the case which had been tried under the provisions of Regulation II. of 1819. Nevertheless at the time of settlement he failed to appear and enter proof of his rights and possessions. A settlement was made with one Motee Singh, and on the expiration of two years a fresh enquiry into the capabilities of the soil took place, and a settlement was made with Golam Allee. During the period when these inquiries were going on, Kurrum Singh never made his appearance. At length after the conclusion of the settlement on the 22nd September 1841, Kurrum Singh appeared, and presented a petition, stating that he held two deeds of sale for 50 beegahs, and prayed that a settlement might be made with him; but his claim was rejected as he failed to appear and adduce proof of possession from April 1838 to September 1841.

The other defendants answer that the plaintiffs admit that the lands now sued for, form a portion of Issapore, and that they are not in their possession. Defendants were the proprietors of the whole of Issapore, and on that account the Government effected settlement with them. The plaintiffs are mere cultivators of the soil.

The sudder ameen has dismissed the plaintiffs' suit on the grounds, 1st, that the deeds of sale are neither attested nor registered; 2nd, that a proclamation was issued on the 4th April 1838, notwithstanding which the plaintiffs did not appear until the 7th June 1839; 3rd, that plaintiffs have failed to show that Afsul Allee and others, who sold the lands to them, were themselves in possession;

4th, Construction No. 1371 and the case of Nynhur Govindo Bose *versus* Musst. Immam Bandec, 17th July 1847, would seem to warrant a dismissal of their claim.

From this decision the plaintiffs have appealed, urging, among other grounds, that the proclamation directed to be issued in conformity with Regulation VII. of 1822, directing them to appear and enter into an engagement with the Government, was not issued, and, therefore, that it cannot now be pleaded that they were recusant and unwilling to engage. A summons was issued for the respondents to attend, and a precept forwarded to the collector to produce the papers of the Issapore settlement case.

JUDGMENT.

The lower court, on hearing the plea of the collector in this suit, ought, under Section 38, Regulation XI. of 1822, to have nonsuited the plaint, or, under Construction No. 1075, have given plaintiffs the option (if they did not appear to be actuated by an improper motive) of filing a supplementary plaint and withdrawing the collector's name. The case, however, has been decided, and no notice taken of the collector's plea. In appeal, no fresh objection has been entered by the collector, and as the appellants (through their vakeels) have agreed to waive all claim against the Government, and the return of the case to the lower court would subject all parties to serious inconvenience and delay, I proceed to record a decision on the question at issue between the parties.

Under Clause 2, Section 12, Regulation VII. of 1822, suits of this nature can be entertained by the ordinary courts, because the plaintiffs merely claim to be restored to the possession of lands which the collector has transferred to others. Consequently, the precedent quoted by the sudder ameen, which appears to refer to a question respecting the jurisdiction of the special commissioner, does not apply in the present case.

In the year 1837, when an ameen was deputed for local investigation to mouzali Issapore Koilah, an aymah mehal attached by the special deputy collector, he reported that within the area of the above mouzali, comprising about 5,000 beegahs, there were two parcels of land containing about 100 beegahs held also rent-free by different parties. The appellants (plaintiffs in the court below) Kurrum Singh and others were mentioned as holding under deeds of sale 49 beegahs, 19 cottahs, 8 doors. Acting on this report the deputy collector proceeded to try the appellant's rights, and, on their failing to appear, a decree was passed in favor of the Government, and they were served with a copy of the proceeding. Finally, a settlement for these lands was effected with the respondents, and although the appellants petitioned that a settlement might be made with them as proprietors, their petition was rejected on the grounds that they had failed to appear and adduce proof of possession. The appellants

have urged that no proclamation subsequent to the resumption of their tenure calling upon them to attend, and enter into an engagement with the Government as directed in Clause 4, Section 10, Regulation VII. of 1822, was issued; and on examination of the original settlement papers I cannot find this proclamation, nor would it appear to have been issued. It remains to consider the claim brought forward by the appellants on its merits. The sudder ameen remarks that they have failed to prove the possession of the vendors, Afsul Allee and others, but the courts do not require proof of transactions which took place some 40 years back, if the persons in possession of the property have held under a title of purchase for a period of 12 years, and no fraud or dishonest acquisition be established against that title. There is, in my opinion, a strong presumption in favor of these lands having been purchased by the ancestors of the appellants, and of their having held possession of them up to the present time; first, there are the deeds of sale filed in the suit; second, the report of the ameen, that the appellants were in possession of the lands under these deeds of sale where he was deputed in the year 1837 by the special deputy collector to make local investigation; third, the evidence of witnesses to show that the appellants have held these lands as proprietors for a series of years. The respondents on the other hand can only allege that the deeds are forgeries, and that the ameen colluded with the appellants to support their fraudulent title to the lands. There is nothing stated, however, in the ameen's report to give the slightest color to this imputation. Besides, his report would seem to be borne out by the records of the collector's office, which show that 103 beegahs of land, in two parcels of 50 beegahs each, were held as rent-free within the ayma lands of mouzah Issapore Koilah so long back as 1182 F. S., corresponding with the year 1774, and it is one of these parcels to which the appellants now advance a claim. The appellants have, I think, made out their title to these lands, and it is therefore ordered, that the appeal be decreed, and the decision of the sudder ameen be reversed, and that a copy of this decree be forwarded to the collector to register the names of the appellants in his book as proprietors of the property under dispute, comprising 49 beegahs, 11 cottahs, 8 doors, within the area of mouzah Issapore Koilah, and to receive from them the Government revenue assessed thereupon by the deputy collector.

The costs incurred by the Government in this case to be defrayed by the appellants, and the rest of the costs to be paid by the respondents.

THE 12TH MARCH 1850.

No. 6 of 1848.

Appeal from the decision of Moulvee Allee Buksh, late Sudder Ameen of Monghyr.

Kurrum Sing and others, (Defendants,) Appellants,

versus

Behadoor Allee, (Plaintiff,) Respondent.

CLAIM, rupees 285-14-2.

This was a suit brought against the appellants as cultivators of 49 beegahs 16 cottahs of mouzalh Issapore Koilah, for arrears of rent for the Fussily years 1247 and 1248. The decision passed in appeal case No. 5 of 1848 will rule this case. Appeal decreed, and the decision of the sudder ameen reversed, with costs.

THE 12TH MARCH 1850.

No. 7 of 1848.

Appeal from the decision of Moulvee Allee Buksh, late Sudder Ameen of Monghyr.

Kurrum Singh and others, (Defendants,) Appellants,

versus

Shah Golam Allee and others, (Plaintiffs,) Respondents.

CLAIM, rupees 293-9, arrears of rent. For the reasons stated in appeal case No. 6, and appeal No. 3, heard this day, ordered, that this appeal, which is connected with the above, be decreed, and the decision of the sudder ameen reversed, with costs.

THE 18TH MARCH 1850.

No. 1 of 1849.

Regular Case.

Mr. Hughes, Plaintiff,

versus

Mr. Fitz Patrick, Attorney of Baboo Mutty Lall Seal,
Defendant.

CLAIM, rupees 2,334-11, arrears of salary, instituted 2nd May 1849.

The plaintiff brought this action *in formâ pauperis*, to recover from the defendant, as purchaser and proprietor of the indigo factories, known under the name of the Colgong concern, the above sum being salary due to him as an assistant in one of the factories of the said concern for a portion of the year 1847, and for the

indigo season 1847-48. The account with the plaintiff was signed by Mr. John Oman, as part proprietor and manager, and the amount of salary due was stated at rupees 2,176-7-3, to which a sum of rupees 158-3-9 has been added in the shape of interest. The plaintiff applied to the present proprietor for payment of the sum claimed, in consequence of the said sum being owing to him from the concern of which defendant had become the purchaser, but the defendant refused to discharge the liability, and referred plaintiff for payment to Mr. Oman. Plaintiff therefore brings this suit to compel payment.

The defendant answers, that his client is not liable for this claim, because he purchased the Colgong concern from the trustees of the Union Bank, with all the factories, zemindarees, &c. &c., appertaining thereto, together with all sums owing to it; but the deed of sale does not render him responsible for any debts that Mr. Oman might have contracted, nor can he, under its conditions, be made liable for such debts.

The plaintiff replied that it was usual for a person purchasing an indigo concern to receive all debts due to the concern, and to become responsible for all debts contracted by the concern.

JUDGMENT.

From the evidence adduced on the part of the plaintiff it appears that he was employed in the Azmah division of the concern as an assistant, which division, owing to disputes among the shareholders had, under the provisions of Act IV. of 1840, been placed in the possession of Mr. F. Elphinstone, who, on the 7th August 1847, engaged the plaintiff on a salary of rupees 125 per mensem for the indigo season 1847-48. In December 1847, the disputes having been adjusted, Mr. James Landale, then in temporary charge of the concern, and acting as Mr. Oman's attorney, gave a general release from, and an account of, the Colgong concern to Mr. Elphinstone, in consideration of his fulfilling the engagement he had entered into with Mr. Oman; and on Mr. Elphinstone's leaving the concern, which he did in conformity with the aforesaid engagement, Mr. Oman returned to it as manager and part proprietor. Being dissatisfied with the plaintiff's conduct during the disputes Mr. Oman ordered him to leave the Bowancopore factory in February 1847, and to adopt such measures as he might think advisable for the recovery of his salary. Mr. J. Landale, who has been examined as a witness in this case, deposes to plaintiff's employment in the factory and to the concern being indebted to plaintiff to the amount of rupees 301-8, to the close of December 1847, which sum witness stated he was unable to discharge from a want of funds, when in temporary management of the concern; witness stated also that it was customary, in engaging an assistant for the season, to pay him for the full period in the event of his receiving his discharge. The Colgong

concern in account with the plaintiff (filed in the record) exhibits a balance of rupees 2,176-7-3, due to him, viz. up to October 1847, a sum of rupees 376-7-3, and an assistant's pay from November 1847 to October 1848 at rupees 150 per mensem, rupees 1,800; but Mr. Landale, in his evidence, and on a reference to his accounts, states that the plaintiff's salary for November and December 1847 were included in the rupees 301-8, due to plaintiff to the close of December 1847. Mr. Elphinstone, moreover, engaged the plaintiff at a salary of rupees 125 only, with a commission of rupees 3 per maund on the outturn indigo, manufactured during the season; but to this commission the plaintiff can have no just claim. Deducting therefore rupees 300 for the 25 rupees per mensem overcharge, and rupees 200 salary for the months of November and December 1847, and rupees 75-7-3, the excess as per Mr. Landale's account, the claim is reduced to rupees 1601-8.

The defendant denies his liability for the amount claimed, and refers in proof to the terms of the deed under which he has become proprietor of the concern. From an inspection of the document, which is a conveyance, it appears that the defendant purchased at a sheriff's sale held in Calcutta, the right, title, and interests of the Union Bank to the Colgong concern, on the express condition that the said Mutty Lall Seal should, at his own expense and charges, incur all the risks and expenses of obtaining possession of the said concern, &c., and sale was for the greater satisfaction of the said Mutty Lall Seal ratified by the trustees of the Union Bank (but without any warranty of title whatsoever.) Now in this document there is no distinct exception made exempting the defendant from liability for any debts that might be owing by the concern; indeed it may be presumed by the conditions annexed at the sheriff's sale that he was to obtain possession at his own expense and charges, that he purchased it with all its liabilities. Adverting moreover to what has always been ruled by the courts in regard to claims against a factory or indigo concern transferred by purchase to another person, and in the absence of any specific clause in the deed, excepting the defendant from claims of the nature now under consideration, it is ordered, that the case be decreed, and that the defendant do pay to the plaintiff the sum of Company's rupees sixteen hundred and one, and eight annas, 1,601-8, with interest from the date of his presenting his petition in this court to be permitted to sue *in formâ pauperis*, and that the defendant be charged with all the costs of this suit.

THE 21ST MARCH 1850.

No. 102 of 1848.

*Original Suit.*Mr. C. H. Barnes, for self and Attorney of Gisborne and Co.,
Plaintiffs,*versus*

Musst. Kumalah Soondree, Defendant.

INSTITUTED 29th December 1848.

This was an action to set aside the proceedings of the Court of Sudder Dewanny Adawlut held in the miscellaneous department, directing the sale of certain villages claimed by the plaintiff in execution of a decree of court taken out by the defendant. The plaintiff states that in a case of execution of decree for the realization of rupees 4,450, against Mr. W. Hawes, the defendant Kumalah Soondree, in execution of the said decree, petitioned the zillah court to attach and sell mouzahs Myeawah, &c., tuppa Nyadee, pergunnah Bhaugulpore, and mouzah Hajeepore, &c., pergunnah Telleaghurree, averring that the above lands were the property of the aforesaid Mr. Hawes, upon which an order issued to attach and sell. An objection to the proposed sale was entered by the plaintiff, in which he set forth that these lands, together with the whole of the property, excepting mouzahs Mohowarah and Mordea, containing indigo factorics, zemindarees, &c., formerly in the possession of Mr. Hawes, had, on the 6th February 1841, been sold by that gentleman for a consideration of two lacs and ten thousand rupees to Messrs. Gisborne and Co., and a conveyance had been executed, and signed by W. Hawes, R. Molloy, and J. Cullem, which document was, on the 4th March 1841, verified in the Supreme Court of Calcutta, and in conformity with its provisions the whole of the factorics, tenements, zemindarees, &c., were assigned over, and came into the possession of Gisborne and Co., who admitted the plaintiff a shareholder to the extent of a 4 annas share, and constituted him their attorney for the management of the 12 annas share retained by them. The names of plaintiff and of Gisborne and Co. have been registered as holders of this property by the collector in the stead of Mr. Hawes, and plaintiff is in full possession. The judge, after inspecting the aforementioned conveyance, directed the sale to be stayed, but on appeal to the Sudder Court the order of the judge was reversed, and directions were issued for the sale to proceed.

For the following reasons, the Buddair concern, which is the name of the property sold by Mr. Hawes, cannot be made liable for this decree: 1st, from the decision of the court it would appear that the debt was contracted by Mr. Hawes in partnership with Farquharson and Co.; 2ndly, the debt was not contracted by or for the Buddair concern; 3rdly, the deed of the 6th February 1841 clearly

specifies that Mr. Hawes sold the whole of the Buddair concern, both small and great, with the exception of mouzahs Mohowarah and Mordea; it was therefore contrary to justice to direct the sale of the concern, because the names of Myeawah and Hajee pore did not appear in the deed, when that document set forth that he had sold the whole concern without reserve, except as before mentioned; as this would necessarily include Myeawah and Hajee pore, which were not excepted, and which always have formed a portion of the Buddair concern. Plaintiff therefore sues to have the miscellaneous order set aside, and to have it declared by a decree of court that these lands are not liable in execution of a decree against Mr. W. Hawes.

The defendant answers, that the concerns of Gungladye and Buddair were both the property of Mr. Hawes, and plaintiff confesses to defendant's right to the sum in execution. In the deed no mention is made of the lands attached for sale; but in a petition for review of judgment passed, presented by the plaintiff to the Sudder Court, he states that although they do not appear in the deed they were mentioned in the byanahnamah (or draft of the lands, &c., about to be sold,) but the said byanahnamah was rejected by the Sudder Court. When the plaintiff could not procure a stamped paper for the year 1841, he, in collusion with Mr. Hawes, had the byanahnamah drafted on country paper, and antedated 8 years, and then had a stamp affixed upon it, and produced it before the Sudder Court: how can lands that do not appear in the deed of sale but only in a byanahnamah be considered as the property of the plaintiffs? The Court of Sudder Dewanny moreover passed a separate order, rejecting the byanahnamah, and it was incumbent on the plaintiff to bring a separate action to set this order aside. The statement of the plaintiff, that he had his name registered in the collector's books in the stead of Mr. Hawes, is incorrect, because Mr. Hawes' name had not been removed when defendant petitioned for the attachment and sale of the property: 8 months after the case was pending this process took place. If the property was sold as set forth in 1841, why did the plaintiff's name remain for 8 years unrecorded in the collector's office? The true state of the case in this. The plaintiff and Mr. Hawes carry on business in partnership; and in proof of this assertion, see the case of Mr. Hawes *versus* Rajah Bhugwan Sing. Besides, it is usual that a person who purchases a concern becomes answerable for all debts due by the concern: see a precedent of the Sudder Court, dated 17th February 1848. The plaintiff under the rule laid down in that decision must make good the decree, and he can bring his action against Mr. Hawes.

The plaintiff replies that Mr. Hawes, in connection with Farquharson and Co., had the management of the Colgong concern, but that concern had no connection with the Buddair concern. The

debts of the two concerns are therefore quite separate. When Mr. Hawes sold the Buddair concern without an objection being offered on the part of any one, and plaintiff was placed in possession of the property, it was contrary to Circular Orders of the Sudder Court of the 10th June 1842, and to the decision of the same court of the 28th January 1846, and to Construction No. 588, to direct the sale of the property in a miscellaneous proceeding. The objections made by the defendant to the byananamah were futile, because that document is attested by a public officer, and a stamp has been affixed to it in conformity with the Government Regulations. The objection, that the name of Mr. Hawes remained registered in the collector's office, will not invalidate the claim of another, *vide* Section 21, Regulation VIII. of 1800. The plaintiff is not in partnership with Mr. Hawes, and the case with the Rajah Bhugwan Sing has no connection with the one before the court. The defendant says that the persons who purchase a concern are liable for all its debts, but the Buddair concern cannot be made answerable for the debts contracted by that of Colgong. The money that has been paid into court by the plaintiff, was a precautionary measure to prevent the sale of the property, not an acknowledgment of his liability for Mr. Hawes' debts.

JUDGMENT.

This is a suit to set aside a miscellaneous order of the court of Sudder Dewanny Adawlut directing the sale of certain lands in execution of a decree of court. The question at issue is, whether these lands were, as alleged by the plaintiff, sold to his clients, Gisborne and Co., on the 6th February 1841, by Mr. Hawes, the party against whom execution has issued, or whether, as alleged by the defendant, the said lands still continue the property of Mr. Hawes, and therefore justly liable in satisfaction of the decree. On a reference to the deed (a conveyance) it would appear that the whole of the factories, tenements, zemindarees, &c. &c., known by the names or descriptions of Buddair, Peallahpore, Sahebgunge, Chupperghat, Autparah, Peerpointee, &c., together with all lands cultivated, or uncultivated, appertaining to the said factories, and every or any part or parcel thereof, save and except the proprietary right of the said W. Hawes to the two several villages of Moordea and Mohowarah, were, on the 6th February 1841, sold by W. Hawes to Gisborne and Co., for a sum of two lacs and ten thousand rupees. In this document no mention is made of Myeawah and Hajeepore, the lands directed to be sold by order of the Sudder Court; neither have they been distinctly excepted as the villages of Moordea and Mohowarah have been, and regarding which there could exist no dispute. It therefore becomes necessary to enquire whether the Myeawah and Hajeepore lands formed a portion of the property well known in this district under the appel-

lation of the Buddair concern; for if this can be shown, it will be but a fair construction of the deed to suppose that it was the intention of the vendor to include them among the lands sold with that property. The copy of the draft of the original deed specifies Myeawah and Hajeepore, among the lands about to be sold, and though it may be presumed that the draft was drawn up with the intention of including these lands in the deed, still the fact of their subsequent omission may equally favor the inference that they were intentionally omitted. The evidence of six witnesses, however, summoned by the plaintiff, clearly shows that Myeawah and Hajeepore formed a portion of the Buddair concern, that they were included in the sale, and that possession of them was given to the plaintiff under the deed of sale, as constituted attorney of Gisborne and Co.

The defendant on the other hand has in no way urged that these lands did not form a portion of the Buddair concern; her answer is restricted to the circumstance that Mr. Hawes, in selling the other property, did not dispose of these lands, and this averment she supports by the evidence of one witness, who is ignorant of every other point connected with the case. I conceive, therefore, from the evidence adduced by the plaintiff, that although no particular specification of these lands occurs in the deed, the fair construction to be put on a document of this nature is, that their mention was omitted by an oversight, which has been cured by the general clause declaring that all lands cultivated, or uncultivated, appertaining to the said factories, were included in the sale. The plaintiff having proved to the satisfaction of the court that Myeawah and Hajeepore formed a portion of the Buddair concern, it is therefore ordered, that the plaint be decreed, and the miscellaneous order of the 18th August 1848, directing the sale of Myeawah and Hajeepore, in execution of decree against W. Hawes, the former proprietor, be set aside, and that defendant do pay the costs of this suit.

THE 21ST MARCH 1850.

No. 166 of 1849.

Appeal from the decision of Baboo Kisto Chundra Chowdry, Moonsiff of Rajmehal.

Meer Jaffer Allee, (Defendant,) Appellant,

versus

Sahibram Sahoo, (Plaintiff,) Respondent.

INSTITUTED 24th March 1849, decided 12th July 1849.

This was a suit to recover from the defendant Company's rupees 25-13-5, being the principal and interest of a bond, dated 15th Bhadoon 1246 F. S.

The defendant admits giving the bond, but pleads payment in the shape of produce for which he holds the plaintiff's receipt.

The moonsiff objects to the receipt which is not dated, and to the evidence of the witnesses brought forward to prove it. Suit decreed for sum claimed.

The defendant has appealed from this decision.

JUDGMENT.

I see no grounds whatever for interfering with the moonsiff's decision, which is hereby affirmed without summoning the respondent.

THE 21ST MARCH 1850.

No. 167 of 1849.

Appeal from the decision of Baboo Kisto Chundra Chowdry, Moonsiff of Rajmehal.

Meer Jaffer Allce, (Defendant,) Appellant,

versus

Sahibram Sahoo, (Plaintiff,) Respondent.

THIS suit was instituted on the same date as No. 166, decided this day. The claim is for rupees 57-6-2½, on a bond. The defendant enters a similar answer, and the moonsiff records the same decision as in the above case. For the reasons stated in appeal, No. 166, ordered, that this appeal be dismissed.

• THE 21ST MARCH 1850.

No. 82 of 1849.

Appeal from the decision of Moulvee Mahomud Hanteeff, first grade Moonsiff of Bhaugulpore.

Golam Wahid and Ishad Hossein, (Defendants,) Appellants,

versus

Tofuzzul Hossein, (Plaintiff,) Respondent.

• INSTITUTED 6th September 1848, decided 28th March 1849.

The plaintiff brought this action on a bond, dated 16th Aughun 1246 F. S., for Sicca rupees 90, which the defendant Ishad Hossein had given him on the security of Golam Wahid. The defendants refused to satisfy the bond. Plaintiff therefore sues for principal and interest, amounting to Company's rupees 192.

The defendants answer that the plaintiff took a farming lease of mouzah Museedchuck from 1246 to 1250 F. S., at a yearly rent of Sicca rupees 90, and at the time of executing the lease and its counterpart, the sum of Sicca rupees 90 was borrowed from plaintiff and a bond drawn out; defendant however gave a tunkhwah chittee (or assignment) on the rent to be paid for the farm, and from this source the plaintiff has realised the full amount of his bond. On

requiring the return of the bond from the plaintiff, he answered that all his papers had been destroyed by a fire.

The plaintiff replies that the bond had no conditions attached to it, and what defendant answers is false. The present claim has no connection with the lease.

The moonsiff decreed the case in plaintiff's favor, because the defendant took no steps to obtain the return of the bond, neither has he filed a receipt or produced the tunkhwah chittee.

From this decision the defendant has appealed on general grounds, and a summons was issued for the respondent to attend.

JUDGMENT.

The respondent (plaintiff below) has, in bringing forward his complaint, made no mention of the farm transaction. On an examination of the lease, the counterpart, and the bond, the three documents appear to have been executed on the same day; the witnesses to these documents, who have given evidence on the appellants' side, testify to the execution of the tunkhwah, or assignment, by the appellant, and his making it over to the respondent at the time the bond was given. Appellant has likewise satisfactorily shown that the money borrowed on the bond has been discharged from the rents. I think therefore that the claim has not been proved. Ordered, that the appeal be decreed, and the decision of the moonsiff be reversed, and that respondent do pay the costs of both courts.

THE 30TH MARCH 1850.

No. 20 of 1844.

Appeal from the decision of Lala Data Ram, late Sudder Ameen of Monghyr.

Ajeet Ram, Gopee Chund, and others, (Defendants,) Appellants,
versus

Musumat Ramdye and others, (Plaintiffs,) Respondents.

CLAIM, landed property.

This case was remanded for re-trial by the Sudder Court on the 15th February 1849. The then judge decided that the respondents (plaintiffs below) had failed to bring their suit within the 12 years allowed by law, but the Court overruled this decision, and directed the case to be again heard on its merits. The plaintiffs sued to recover possession of 8 annas, 12 gundas, 2 cowrees, 2 krants share of mouzahs Soorujpoora and Bishenpore, of which they had been dispossessed by the defendants, who, on the 19th November 1829, purchased at a sale in execution of a decree of court the rights and interests of Mohun Lall, Purshad Roy, Hoolas Roy, Behadoor Roy, Joorawun Roy, Omrao Roy, Duleel Roy, Bunnoo Roy, Prannath Roy, and Seebey Singh Roy, in the aforementioned villages. The

property in question was ancestral, having been acquired by their common ancestor, Soorujmun Roy, from whom have descended the plaintiffs, as well as the parties whose rights therein were disposed of by the collector.

The defendants answered that they purchased at the said sale the whole 16 annas of the two mouzahs, and that the plaintiffs never enjoyed possession of any portion thereof.

The sudder ameen decreed the case in the plaintiffs' favor, on the grounds that the defendants had purchased the rights and interests of ten individuals only, among the shareholders of the ancestral property.

On appeal, the defendants were summoned that the whole of the proceedings might be gone through in the presence of both parties.

JUDGMENT.

This is a suit on the part of certain persons claiming as shareholders of a joint undivided ancestral property, their shares of which they have been dispossessed of by the appellant (defendant below,) who, at a sale in execution of a decree of court, purchased the rights and interests of ten of the shareholders, and then managed to acquire possession of the whole property to the exclusion of the complainants' just rights. In a sale of this nature nothing being guaranteed to the purchaser beyond the rights and interests of the persons against whom execution of decree issues, the question that presents itself for determination is the following. What was the extent of the rights and interests in the property sold, enjoyed by the ten individuals at the period of sale? From the documents and proceedings of the several authorities filed with the record, it would appear that the aforesaid ten individuals (the name of Gurboo Roy, now represented by his widow Musumat Ramdyc, plaintiff, likewise appears, but he died previous to the sale) have invariably been designated maliks or proprietors of Soorujpoora and Bishempore, and that they alone have transacted all business and performed all acts, connected with the management and control of that property. Their names are alone to be found in a decree of the zillah court of the 28th November 1811, in a suit respecting this property, and in that of the provincial court of the 12th April 1815. Again, their names are recorded as entering into an engagement for this property with the Government, and receiving an ummul namah from the collector in January 1816. From a purwannah of the collector's dated so far back as June 2nd, 1802, I find the same individuals, with the exception of two persons, viz., Bechu Roy subsequently represented by Hoolas Roy, his son, and Dhurray Roy represented by Praun Nath his son, disposing by sale of the 4 annas share of this same property to Mohun Lall, and petitioning the collector to register his name in the place of theirs, as proprietor to the above extent, in the book of mutations, which was accordingly done. Again, on the 8th June 1815, the same individuals (Hoolas and Praun Nath

being substituted for Bechu and Dhurray) registered an ikrar-namah before the then register of deeds consenting to farm out on lease for a period of 23 years the 12 annas share to Mohun Lall, the proprietor of the 4 annas share. The same individuals moreover borrowed the money that led eventually to the sale of the property. The usual processes issued, and no objection at the time was offered to the sale. These facts are not denied by the respondents, but they rest their claim on the circumstance of the property being ancestral, and on a genealogical table which they have filed with the record. In testing this table with a petition presented to the court on the 8th May 1821, by Seebey Singh Roy, one of the proprietors, and which document specifies the shares enjoyed by the different shareholders, and the manner in which they inherited from the common ancestor, I fail to find any trace of the respondents' names, or of those of their fathers: certain of the aforesaid ten individuals are set down in the table as having three and four brothers, from whom the respondents derive their rights, but no mention of these names occurs in the above document. The claim of the respondents appears to me to be based upon inferences, drawn from the property being ancestral, and the alleged validity of the genealogical table, but they have altogether failed to show by any one single document that they ever actually enjoyed possession of the property under dispute. The respondents therefore, in my opinion, have failed to make out their claim to the satisfaction of the court, and their plaint must be dismissed. Ordered, that the appeal be decreed, and the decision of the sudder ameen reversed, with all costs to be defrayed by the respondents.

ZILLAH EAST BURDWAN.

PRESENT: JAMES ALEXANDER, Esq., OFFICIATING JUDGE.

THE 1ST MARCH 1850.

Case No. 271 of 1849.

*Appeal from the decision of Sreekaunt Singh, Moonsiff of Samuntee,
dated the 6th June 1849.*

Pudolochun Dutt, (Plaintiff,) Appellant,

versus

Bindabun Dutt and others, (Defendants,) Respondents.

THE question to be tried is, whether the appellant (plaintiff) has obtained a prescriptive right to water his land from a certain tank or not.

The defendants (respondents) plead that they have lately bought the tank, restored its banks, and planted trees upon them; that, during the eighteen months, whilst these operations were going on, the plaintiff offered no opposition. They also plead that the plaintiff's field is 300 beegahs distant from the tank, and may be equally well watered, and is, in fact, watered from other tanks. The moonsiff went to the spot, took evidence on both sides, and, rejecting the evidence of the plaintiff, dismissed his claim. He cites a former decision of Mr. Shaw's in support of his own opinion. The proceedings of the moonsiff are far from complete; his local investigation might have cleared up one point, the distance of the plaintiff's field from the tank in question; this is not noticed. The reasons for which he has rejected the evidence of the plaintiff's witnesses are unsatisfactory. The defendants' witnesses are not at all more worthy of credit. The moonsiff has also overlooked the fact that the defendants, whilst repairing the tank, were opposed by the plaintiff; there is strong presumption in favor of the plaintiff that, if there was water at hand, he made use of it in the irrigation of his field. It remains to be tried whether this use can be established to be of sufficient duration to give a prescriptive title to its continuance. In the absence of any precedent it may be assumed, under the general law, that a custom of twelve years' standing would constitute usage, provided, however, that such use or custom was not dependant on the permission of the proprietor of the tank, in which case the claim of the plaintiff's would again be dependant on such permission. The moonsiff will decide the case after due enquiry on all these points.

THE 1ST MARCH 1850.

Case No. 272 of 1849.

Appeal from the decision of Sreekaunt Singh, Moonsiff of Samunttee, dated the 6th June 1849.

Madhubanund Mookerjea and others, (Plaintiffs,) Appellants,

versus

Bindabund Dutt and others, (Defendants,) Respondents.

THIS case resembles No. 271. The same remarks and orders are applicable.

THE 2ND MARCH 1850.

Case No. 310 of 1849.

Appeal from the decision of Nazirooddeen Mahomed, Moonsiff of Mungulkote, dated the 17th July 1849.

Jugulkishore Adhikaree, (Plaintiff,) Appellant,

versus

Bycauntnath Dey, (Defendant,) Respondent.

THIS is a suit instituted for the recovery of a balance due upon a bond for rupees 99, said to have been executed under date Sawun 4th, 1254.

The defendant denies all knowledge of the plaintiff or his bond, and pleads that he was confined with illness at the alleged time of execution of the bond.

The moonsiff has bestowed considerable attention on the case. He discredits the witnesses to the bond. It is in evidence that the defendant is a rich man engaged in traffic to the extent of thirty or forty thousand rupees annually; it is not probable that he should have had occasion to borrow so small a sum from a person living at a distance; he has produced his books in which his daily transactions are brought to account; there is no entry of the sum under dispute. On the other hand, the lender, being called on to bring his book to show the disbursement of the sum lent, and also to prove that he was in the habit of lending moneys, brought some books, which the moonsiff describes as evidently prepared for the occasion, so much so that the holes which the stitching of the binding went through, were not even torn. There is also evidence on the part of the defendant that he was ill at the time the bond was said to have been executed. The plaintiff also cannot prove the repayment of the sums already said to have been paid in part liquidation of the bond. There are no witnesses to this fact, and the payment is not entered upon the back of the bond. The defendant also avers that the case has been got up at the instigation of a third party: there is, of course, no evidence to this point.

For the reasons recited above, the moonsiff dismisses the plaint.

The plaintiff, in his appeal, attempts to refute each argument, but the refutation does not appear to me in any instance successful. The appeal is dismissed.

THE 2ND MARCH 1850.

No. 312 of 1849.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kyttee, dated the 18th July 1849.

Lochnath Samunt and others, (Defendants,) Appellants,

versus

Radhanath Samunt and others, (Plaintiffs,) Respondents.

THIS was a suit on the part of the plaintiffs (respondents,) to recover possession of a jumma from which they had been ousted by the defendants (appellants,) together with mesne proceeds during the period of their ejection.

The plaintiffs claim a jumma registered in the zemindarry records as containing 25 beegahs, 9 cottahs, 3 poas, and paying a rent of rupees 33, 14 annas. The defendants had ousted them unlawfully, let their lands to another ryut, one Oottum Churn: they therefore sought their remedy in the present action.

The defendants, in the first instance, object to the plaint, that it is only brought on the part of one plaintiff, one Radhanath, whereas the names of all the co-sharers ought to have been inserted: they then state that the former jumma was rupees 38; that they (the defendants) being about to increase this, the plaintiffs threw up their land and signed a formal resignation of it, upon which the defendants re-let it to Oottum Churn, at a rent of rupees 45.

The moonsiff overrules the objection as to the absence of the names of all the shareholders from amongst the plaintiffs: he very properly rules that the representative, or registered lumberdar, may sue in his own name. The moonsiff discredits the alleged deed of resignation, chiefly because the alleged attempt to raise the rent of the land was made at the wrong time of the year, also on account of the intrinsic improbability of the thing, and because it was proved by witnesses that the dispossession of the plaintiffs was forcible, not voluntary; neither is there any evidence as to any legal proceeding on the part of the defendants with a view to raising the rents.

The moonsiff appears to me to have formed a sound judgment on the case; neither do the pleas put in, in appeal, cause me to alter this opinion. In one point the case is incomplete; the plaintiff has proved his former occupancy, but not the exact rate at which he held. In adjusting the account of mesne proceeds the moonsiff must obtain evidence on this head. The case must be sent back to him for this purpose.

THE 5TH MARCH 1850.

Case No. 317 of 1849.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kytee, dated the 18th July 1849.

Uttum Churn Karpha, (Claimant,) Appellant,
versus

Lochnath Samunt and others, (Plaintiffs,)
and Sonatun Samunt and others, (Defendants,) Respondents.

IN this case the appellant, Uttum Churn Karpha, is the ryut with whom the settlement of the respondents' jumma had been made. The defendants in the original suit having been cast in the moonsiff's court, this present party thought it advisable, for the better protection of his own interests, to institute a distinct appeal against the decision of the moonsiff. As it has been decided that his lessor had no power to lease the lands to this present appellant, his appeal must be dismissed, with costs.

THE 5TH MARCH 1850.

Case No. 34 of 1849.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 27th July 1849.

The representatives of the Union Bank, Trustees on behalf of the Estate of Rogers, (Plaintiffs,) Respondents,

versus

Chunder Mohun Roy and others, (Defendants,) Appellants.

THE plaintiff is lessee of one Bycauntnath Chowdry, under a pottah or lease, according to which he was to hold 1,201 beegahs of land at a rupee a beegah. It was a condition of the lease that, should alluvion or diluvion occur, there should be a proportionate increase or decrease in the rent. The defendant, Chunder Mohun, having taken a lease of the village in which the lands included in this lease were situated, neglected to abide by this condition, and, although diluvion had taken place, he sued the plaintiff in the summary court for the full amount of rent proportionate to the entire quantity of 1,201 beegahs. The collector did not entertain the plaintiff's objection as to the occurrence of diluvion, but left him to his remedy in the civil court. He accordingly brought this action.

The defendant, in his reply, alleged that there had been no loss of land by diluvion, but, on the contrary, alluvion had taken place, and that the plaintiff was in possession of 1,500 beegahs instead of 12.

To test this fact an ameen was appointed, who issued the regular notices to both parties to attend on the occasion of his measurement. The plaintiff's servants attended. No one attended on the part

of the defendants. The ameen, having completed his measurement, returned the quantity of land now remaining as consisting of beegahs 813, cottahs 17.

The defendant objected before the sudder ameen that this measurement was improper, and accounted for his not being present at the measurement by saying that the ameen lived in the plaintiff's house and could not be expected to be impartial. The sudder ameen, dismissing the objection, decided according to the measurement. The case has come up on appeal on the same grounds as those on which the objection was made to the sudder ameen. They appear totally insufficient: there is no specific charge of false measurement or partiality.

The general presumption is advanced on very slight grounds, and it would have been in the defendants' power to avert any possible ill consequences by diligent attendance on the measurement. The appeal is dismissed.

THE 5TH MARCH 1850.

Case No. 35 of 1849.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 27th July 1849.

Ramjoy Chattoorjea, (Plaintiff,) Appellant,

Mr. P. Rayson, (Defendant,) Respondent.

THE facts in this case resemble those set forth in No. 34, with the exception of a difference in the quantity of land under dispute. The grounds of appeal are the same. The appeal is dismissed.

THE 7TH MARCH 1850.

Case No. 10 of 1849.

Appeal from the decision of Moulvee Fuzzul Rubbee, Principal Sudder Ameen, dated the 29th October 1849.

Khoodoomonee Beebee, (Plaintiff,) Appellant,

versus

Chowdry Abdool Rezak and others, (Defendants,) Respondents.

IN this case the plaintiff sued for a sum of rupees 711-15-5, being the accumulated amount of arrears of annuity granted to her by Zahiroolnissa under a deed of gift, dated 4th Phalgun 1216, and charged upon the rents of mehals Nouhat and Suniya. The plaintiff states that during the minority of herself, her sister, and brothers, the estate was managed by Chowdry Abdool Rezak, who made regular payments until 1234: her brother coming of age, he (the brother) relinquished his share of the property to her, and a regular settlement

took place as by a deed of agreement, dated 3rd Aughun 1234, according to which Chowdry Abdool Rezak gave up his management of the share of the property into the hands of the plaintiff; that subsequently to that another arrangement took place, according to which one Doolloop Sheikh, being appointed conjointly by her father-in-law, Loharee Shah, and Chowdry Abdool Rezak, continued to make the collections and pay her pensions up to 1251, from which period there had been no further payments; that upon enquiry she found that one Gopal Doss mohunt, styling himself the mortgagee on the part of Chowdry Abdool Rezak, was in possession and making collections: she therefore brings the present action against Chowdry Abdool Rezak, Gopal Doss, Mohunt Doolloop Sheikh, and Attur Alli.

Amongst the defendants Chowdry Abdool Rezak at first opposed the suit, but subsequently admitted the plaintiff's claim to the sum in question, stating that he had on various occasions mortgaged portions of his properties in mehals Nouhat and Suniya (to Prisootun Doss and Gopal Mohunt Doss); but that he had never alienated the portion on which the plaintiff's annuity was charged.

Gopal Mohunt Doss, another defendant, states that his predecessor, Prisootun Doss, bought Chowdry Abdool Rezak's interest in mehal Suniya in 1232; that the possession of the purchaser and his representatives had been since undisturbed, and could not now be questioned; also that, under date 13th Srabun 1245, Sukram Doss had bought Abdool Rezak's interests in Nouhat, and that he was heir to Sukram Doss: in proof of this he has filed the usual deeds of sale.

Attur Alli, another defendant, states that he has purchased the share of the other sister, and is in possession.

Doolloop Sheik, in his defence, admits that he was appointed gomastah by Chowdry Abdool Rezak and the plaintiff's father-in-law.

In order to establish any lien on the part of the plaintiff, it was necessary that she should have produced the original deed of division under which she succeeded to it. The nature and efficiency of the document filed in court for this purpose has been very much discussed; but by the plaintiff's own admission it is a copy, and cannot therefore be received. There is also the deed of gift from Keramut Alli to his sisters; but as the donor's title is based upon the deed of division, the deed of gift must fall with it. There remains to be considered the deeds of agreement signed in 1234, according to which it is arranged that the plaintiff should have collected her own pension on her own account; but this was by the plaintiff's own showing, superseded by some subsequent arrangement, according to which the management reverted into the hands of Abdool Rezak Chowdry. This deed might have been of some value as collateral evidence, but is not sufficient to originate a suit; had the lien been established, this deed might have proved its recognition and continuance, but is not by itself sufficient to establish it. There is no documentary evidence of

any value for the substantiation of the title. The oral evidence merely proves that the plaintiff occasionally received sums of money from Abdool Rezak on account of her rent charge on the mehals Suniya and Nouhat, but there is no evidence to show that the plaintiff ever obtained, or retained any absolute lien on the mehals themselves.

On the part of Mohunt Gopal Doss it has been shown that he obtained possession of the mehals by purchase from Abdool Rezak. In the case of mehal Suniya, his possession is of such standing that it cannot now be disturbed. In the case of the other mehal Nouhat, the plaintiff has failed to establish her lien.

The principal sudder ameer has declared the document, purporting to be a tukseemnameh, a forgery, and has treated the whole case as a conspiracy on the part of the plaintiff and Abdool Rezak to recover possession of their interests in mehals Suniya and Nouhat, which had already been sold to Mohunt Gopal Doss. It does not appear to me that there is sufficient reason for the adoption of this extreme view of the case, neither do I think that the tukseemnameh was filed with any fraudulent intent. As, however, it has become necessary to investigate this point, it will be incumbent on me on another occasion, to assign my reasons for this opinion more at length. It is sufficient at present that I concur with the principal sudder ameer in considering that the plaintiff has not established her case, and therefore direct the dismissal of the appeal.

THE 12TH MARCH 1850. .

Case No. 385 of 1849.

Appeal from the decision of Dubeerooddeen Mahomed, Moonsiff of Madpore, dated the 30th October 1849.

Komla Kaunt, (Plaintiff,) Respondent,

versus

Kenna Ram Gorain, (Defendant,) Respondent.

Plaint for rupees 24.

THE plaintiff sues for right to assess 4 biswas of land at the village rate of 10 rupees per beegah, that being the usual rent on ground fit for building on.

The defence was in too late, and cannot be noticed.

The plaintiff, having undertaken to enhance the rents of his tenant, was bound to proceed according to law, issuing the prescribed notices at the prescribed periods; and it was the moonsiff's duty, before passing a decree in his favor, to ascertain that he had done so. The delay on the part of the defendant in filing his answer did not confer on the plaintiff any immunity from the performance

of those acts which the law exacts. The evidence leads to the presumption that the conduct of the plaintiff has been far from legal. There is no evidence that he conformed to the dictates of the law. The moonsiff will try the case again, and take care that he does not admit the plaintiff's right to enhance the rents of the defendant, until he has taken such steps as the law prescribes.

THE 12TH MARCH 1850.

Case No. 386 of 1849.

Appeal from the decision of Kaze Nazirooddeen, Moonsiff of Indoss, dated the 20th October 1849.

Mudoosoodun Sircar, (Plaintiff,) Respondent.

Brimo Mahee Dasse, (Defendant,) Appellant.

Sutta Bhama Dasse, (Defendant,) Respondent.

Corom Alli and Raie Mohun, Claimants.

THIS was a suit instituted upon a bond for rupees 29, said to have been executed under date 11th Bhadoon 1250, by Pursotim Sircar, the father of the present defendants, since deceased. The payment of the above sum, with interest, was secured by a mortgage of a certain plot of land, a house, and clump of bamboos.

The first defendant, Brimo Mahee, pleaded that, besides herself and elder sister, there was another sister, who ought to have been included in the plaint, as she was still married and her issue (if any) would be the real heirs to the property of the deceased. She also denies the bond, and declares that the property, stated to have been mortgaged, had been sold to the claimants, Corom Alli and Raie Mohun, twenty years before the institution of this suit; she also declares that none of her father's property passed to her by right of inheritance; that she is in possession of two beegahs of a jumma, which did belong to her father once, but which he gave her in free gift, and transferred to her name in the zemindaree accounts before his death. She pleads that the property said to have been mortgaged had been notoriously sold for years before execution of the bond, and that this raises a strong presumption against the genuineness of the bond, as the mortgagee must have been cognizant of the fact of the sale.

Sutta Bhama admits the bond, but declares that the amount has been paid, declares that the suit is collusive.

The two claimants advance their claims to the mortgaged property as having been purchased by them previously to the mortgage.

The moonsiff, in his decision, considers the bond to be satisfactorily proven, and records an opinion to the effect that it being not proven that the deceased mortgager was in possession of proprietary interests in the property pledged at the time of effecting the mort-

gage, that the claimants, as purchasers, must be released from liability, and that the amount of the debt must be realized from the undisputed property of the deceased.

The appeal is preferred, on the grounds that the only witnesses to the bond are three low caste men; that the appellant's married sister is not included in the plaint; that the moonsiff, having admitted the claims of two parties, as purchasers before the mortgage, was also bound to admit the claim of the appellant as donee.

The first ground of appeal is not alone admissible, but the whole appearance of the bond is suspicious. With reference to the second, it must be observed that heirs succeeding to property become jointly and severally liable for the debts of the deceased proprietor. With reference to the third, there is this difference between the claims admitted by the moonsiff and those of the appellant, which are not noticed by him, that in one instance the property was said to have been pledged to secure the bond, and therefore a decision regarding it might have been considered an integral part of the suit, whereas the decision regarding the two beegahs said to have been given to the appellant might have been deferred till they were attached in execution of the decree. The moonsiff in the first instance called on the mortgagee to prove the possession of the mortgager when the mortgage was effected. He also called on the purchasers to prove their purchase, but decided the case without waiting for either proof. Besides the irregularity of this proceeding, the proof was of importance to the case, for if the property said to have been mortgaged had been sold for years beforehand, it is not probable that the mortgagee, who is a member of the family of the deceased debtor, would have lent money on their security, and this fact would throw great doubt on the whole transaction.

As the appellant avers that this suit is the result of a conspiracy against herself on the part of the plaintiff and her elder sister, the whole case must be carefully investigated.

The moonsiff will take evidence as to the sales to the claimants, and as to their taking possession after the sale: he will then decide again upon the bond, taking due pains to determine how far there is reason to believe that the mortgagee was informed of these sales before he accepted the property sold as security, and, if he was cognizant, how far it is probable that he advanced money on such security.

THE 14TH MARCH 1850.

Case No. 387 of 1849.

Appeal from the decision of Khoda Buksh, Moonsiff of Culna, dated the 29th October 1849.

Brijolall Gosain, (Plaintiff,) Appellant,

versus

Gooroodoss Gosain, (Defendant,) Respondent.

THE plaintiff sues upon a bond for 17 rupees, executed in favor of his father, Subbul Chund Gosain, under date the 7th Bysack 1250, and payable in Chyte of the same year.

The defendant denies the bond *in toto*, and ascribes the suit to a conspiracy, got up by Cowra Ram Raie and others.

The moonsiff rejects the plaint, because one of the witnesses is non-resident and the other two are described as bazaar witnesses; the bond itself is not written by any one in the neighbourhood, and there is a discrepancy between the signature to the bond and that of the vakalutnamah filed in the court.

The petition of appeal is founded generally on the insufficiency of the grounds of the decision. The appellant denies all conspiracy with Cowra Raie, and prays that an opportunity may be afforded of offering further proof.

The system of suing on false bonds is unfortunately so common that it can hardly be said that there is any absolute presumption in favor of a plaintiff; but still a plaint based upon a legal instrument and supported by evidence should not be lightly set aside. In other cases where moonsiffs have discredited bonds, they have shown great care and skill in assigning their reasons for doing so: in this case the argument in favor of the rejection does not evince much care. The witnesses are rejected; the first because he was non-resident: it was elicited on cross-examination that he lived at the distance of half a coss; he gave an apparently trustworthy account of the circumstances under which he was called on to write the bond. The two witnesses rejected as bazaar men are of more respectable caste than those generally summoned on these occasions. The evidence for the plaint is of a better description than usual.

For the defence three men were called, who deposed to the existence of enmity between the defendant and Cowra Raie, the alleged suborner of the case; to make their evidence more direct, they report a conversation at which they heard Cowra Raie and others conspiring against defendant; on cross-examination facts were elicited very adverse to their general credibility.

The plaintiff asserts that he had other proofs in his possession which he did not before bring forward, trusting to the sufficiency of those already filed; the case was decided at the close of the month in a somewhat hasty manner, and the plaintiff appears to have reason for pleading that he was surprised at the rejection of his evidence, and at not being allowed to produce other. On this ground I send the case back, with orders to the moonsiff to take additional evidence, and then pass such orders as may seem necessary.

THE 14TH MARCH 1850.

Case No. 388 of 1849.

Appeal from the decision of Khoda Buksh, Moonsiff of Culna, dated the 22nd October 1849.

Ram Mohun Ghosal, (Plaintiff,) Appellant,

versus.

Emam Buksh Sircar, (Defendant,) Respondent.

THE plaintiff distrained on defendant for an alleged balance of rupees 24, annas 6. The defendant obtained a decree before the collector reversing the distraint. The plaintiff has brought an action to recover the amount. It appears that the defendant holds dakhilas signed or alleged to be signed by plaintiff's gomashtha, to the full amount of the balance. This same gomashtha was however the agent for the distraint on the part of the plaintiff. The plaintiff repudiates the dakhilas, because they are not entered in his accounts as directed by himself.

The moonsiff observes that there is every reason to suspect fraudulent conduct on the part of the gomashtha, and that no investigation can take place in the present condition of the case; that the gomashtha ought to have been included in the case; finally, he nonsuits the case.

It was the moonsiff's duty simply to determine whether the dakhilas are genuine, and were given by the gomashtha whilst acting as the accredited agent of the plaintiff; if they were, he will hold them as given by the plaintiff. The defendant is not responsible for the amounts not having been duly entered in the accounts. If the gomashtha, having received, and given dakhilas for, a particular instalment of rent, again distrained for that same instalment, the fact of the distraint is no positive evidence of the default; it might be merely an instance of illegal conduct for which, under Section 32, Regulation XVII. 1793, the plaintiff would be responsible.

The moonsiff's order nonsuited the case is reversed: he must try the case on its merits.

THE 18TH MARCH 1850.

Case No. 11 of 1849.

Appeal from the decision of Moulvee Fuzzul Rubbee, Principal Sudder Ameen of Burdwan, dated the 8th November 1849.

Juggut Mohinee Dasse, (Plaintiff,) Appellant,
versus

Puresnath Chowdry, (Defendant,) Respondent.

THE original suit in this case was for rupees 692, 6 annas, 10 gundas, for arrears of rent due on account of the years 1252, 1253, and 1254. The plaint having been dismissed, the plaintiff reduces his demand, and has appealed upon a stamp of value proportionate to this demand. As the original demand was on account of rent calculated at a certain rate, which rate has been reduced since the institution of the suit by the orders of the appellate court, the corresponding reduction in the value of the stamp appears equitable.

This point being disposed of, the question next to be tried is whether the amount claimed was due or not. The plaintiff was called upon to prove his claim by the production of the village accounts: he failed to do so. The only evidence which he produced was the deposition of his gomashtha; but on being called on to state the exact amount due by the defendants, he admitted that they had made some payments, and that he could not state the amount of balance with accuracy without reference to the accounts; after an interval of five months those accounts had not been produced, when the case was decided. On the other hand the defendants produced receipts for the amount of the alleged balance, as also witnesses to prove the actual payment. Under these circumstances the decision of the principal sudder ameen was in favor of the defendants.

The petition of appeal assigns various reasons why the receipts should not have been admitted by the principal sudder ameen, and prays for further time to put in the village accounts. The appellant had ample time to prove his case before the principal sudder ameen: having failed to do so, he cannot now be heard. His appeal is dismissed.

THE 18TH MARCH 1850.

Case No. 2 of 1850.

Appeal from a decision of Moulvee Fuzzul Rubbee, Principal Sudder Ameen of Burdwan, dated the 13th December 1849.

Hurree Narain Dutt and others, (Plaintiffs,) Appellants,

versus

Punnah Loll Singh Baboo and others, (Defendants,) Respondents.

* VALUE of suit, rupees 2,797-3-4.

This was a suit to recover the value of certain jungle lands, including the timber, which had been carried off by the defendants.

The plaintiff stated that the defendants having in the year 1843 obtained a decree against these present plaintiffs for 600 beegahs of jungle, an ameen was sent out to put them in possession; that at that time they, the defendants, took possession of more land than had been decreed to them; that the plaintiffs petitioned against their doing so, but that their petition was rejected under date April 30th, 1845; that since then the defendants had taken 1,199 beegahs instead of 600, the excess being the property of the plaintiffs: they (the plaintiffs) had sought their remedy in this present action.

The principal sudder ameen decided that the matter in dispute, being connected with the execution of a decree of court and having been summarily decided, could not now be re-investigated, without infringement of the Construction No. 1129.

From examination of the papers it appears that the summary orders, dated April 30th, 1845, only referred to two and a half beegahs of land, and although an order regarding them may have given the defendants a title to claim all the land between them and their own estate, yet this is not shown to be the case; even had this been shown to be the case, a re-investigation would have been necessary, for it is not to be supposed that any summary order regarding the execution of a decree for a specific quantity of land, 600 beegahs, should empower the parties obtaining it to take indisputable possession of 1199. In fact, where the quantity of land is specified there can be no difficulty in determining whether such a large amount as that claimed by the present plaintiffs was included in the first decree or not. If it was not, there can be nothing to bar the plaintiffs' right of action. The case must be sent back for re-trial.

THE 19TH MARCH 1850.

Case No. 1 of 1850.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 29th December 1849.

Bulram Saha and others, (Defendants,) Appellants,

versus

Doorga Churn Raec, (Plaintiff,) Respondent.

VALUE of plaint, rupees 800.

The original suit was an action for damages brought by the plaintiff as against six defendants for loss sustained by their assault, by which the plaintiff's "hurmut," or honor, was damaged to the extent indicated by the rate at which the damages are claimed. This case has already come up in appeal, and was noticed in Mr. Hamilton's decision, reported at page 188, in the book of Decisions

for August. From the perusal of this decision it will appear that, on the first hearing, the case was decided originally *ex parte* against the defendants, who were sentenced to pay 100 rupees between them. On appeal, as it appeared that one of them was in jail, and had not received the notices which were served at his dwelling house, the case was sent back for re-trial. N. B.—In the printed report (of this part of the case) the word “defendants” is used where “defendant” would have been more accurate. On the case being sent back, this defendant appeared and put in a defence, denying the assault on the part of himself and his brethren, and offering exculpatory evidence. The sudder ameen, however, merely contented himself with striking him out from amongst the defendants, making a corresponding reduction in the amount of fine, and letting the former sentence stand against the other defendants. These latter parties for the first time made their appearance before me in appeal. It was a question whether the appeal could be entertained. It appeared, however, that the irregularity of the last decision seemed clearly to exclude the case from the provisions of the Circular Orders of 12th March 1841. The decision itself seemed to require amendment. The suit was not instituted for recovery of damages arising from defamation of character, but for compensation for loss of honor sustained by the plaintiff from a trifling assault accompanied with abuse. It is not attempted to be shown that the plaintiff suffered any loss or inconvenience beyond the annoyance of the moment, yet damages have been decreed to the amount of 100 rupees. On the part of the plaintiff there is no proof that the defendants are in such a condition of life as to enable them to pay 100 rupees; they are common village people, the payment of the fine would ruin them. These actions for assault ought not to be discouraged, for they are a better vent for ill-feeling than false suits on false documents; but it is important that plaintiffs should understand that they are not to expect damages to a larger amount than they can prove that they have suffered loss. In this case the plaintiff will be amply compensated by 20 rupees, which will be levied from the five defendants. The defendants are not responsible for the exaggerated estimate which the plaintiff formed of his own sufferings, and cannot be called on to pay the costs of suit at the high rate at which the plaintiff has chosen to lay his damages. The decision of the sudder ameen is reversed. The plaintiff will receive damages to the extent of 20 rupees, and will receive the costs of suit in proportion.

THE 19TH MARCH 1850.

Case No. 3 of 1850.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 26th January 1850.

Sheik Hossein Buksh, (Defendant,) Appellant,

versus

Simon Thaddeus, (Plaintiff,) Respondent.

IN this case the plaintiff sued for compensation for injury inflicted upon him by the abuse of the defendant, and laid his damages at rupees 800. The sudder ameen gave a decree to the amount of rupees 100 in favor of the plaintiff. It appears, however, that the sudder ameen refused to summon witnesses on the part of the defendant, who wished to prove that the plaintiff was trespassing by fishing in his pond without leave. The case must go back again to the sudder ameen, with orders to summon the witnesses for the defence, and then to try it again and enquire whether the assault, if proven, was provoked by any illegal conduct on the part of the plaintiff; also to confine his damages to the amount of loss actually proved to have been sustained by the plaintiff.

THE 21ST MARCH 1850.

Case No. 389 of 1849.

*Appeal from the decision of Pearee Mohun Bonnerjee, Moonsiff of Kytee, dated the 24th October 1849.**

The heirs of Anund Mehye Dutt, (Plaintiffs,) Respondents,

versus

Ramchund Malik, (Defendant,) Appellant.

THIS was a suit for the recovery of 27 rupees, 6 annas, 8 gundahs, a balance of rent due on account of the years running from 1251 to 1254.

The plaint states that the balance accrued upon a jumma in mouzah Babla, paying a yearly rent of 10 rupees, 13 annas, 12 gundahs.

The defendant declares that the amount of jumma has been erroneously described in the plaint, that it is 18 rupees per anum, and has been paid to the plaintiffs' gomashita, Ramjeewun, from whom the defendant has received the usual dakhilas.

The plaintiff, in reply, states that Ramjeewun is not the gomashita of the village called Babla, and produces the village accounts to prove the accuracy of the balance.

On trial, the defendant produced his dakhilas and seven witnesses to prove them, but the dakhilas were repudiated by Ramjeewun, the gomashita by whom they were said to have been given. The signature

to them did not resemble the handwriting of Ramjeewun. Four of the witnesses were interested, being themselves defendants in other suits, in which the defendant in this suit was assisting them with his evidence; moreover, the dakhilas being for 18 rupees, were at variance with the village accounts, which only exhibited a demand at the rate of 10 rupees against the defendant. Under these circumstances the moonsiff decided against the defendant.

The grounds of appeal were the alleged improper rejection of the defendant's evidence.

In the course of the argument before me it appeared that the present plaintiff has lost possession of the talook in which the defendant holds his lands, under a decree of court, and that an enquiry for the purpose of ascertaining the amount of proceeds during the time of her possession is about to be made. The facts of the previous litigation and of the pending enquiry are sufficient to account both for the tenant's withholding his rent and for his remarkable confession that his rent has been understated. I have very little doubt but that the moonsiff has arrived at a sound conclusion, and therefore confirm his decision.

THE 21ST MARCH 1850.

Case No. 390 of 1849.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kytee, dated the 24th October 1849.

The heirs of Anund Mehye Dutt, (Plaintiffs,) Respondents,

versus

Joy Deb Malik, (Defendant,) Appellant.

THIS is a suit for arrears of rent amounting to rupees 12-0-5, due on account of the year 1254.

The facts in this case closely resemble those in No. 389. The talook is the same, the plaintiff is the same, the line of defence, the arguments, and evidence are the same. The moonsiff has given his decision on the same grounds. The grounds of appeal are the same. My confirmation of the moonsiff's decision rests on the same grounds.

THE 21ST MARCH 1850.

Case No. 391 of 1849.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kytee, dated the 24th October 1849.

The heirs of Anund Mehye Dutt, (Plaintiffs,) Respondents,

versus

Sisteedhur Malik, (Defendant,) Appellant.

THIS is a suit for arrears of rent amounting to rupees 35-0-8, due on account of the years 1251 and 1254. The facts in this case

closely resemble those in No. 389. The talook is the same, the plaintiff is the same, the line of defence, the arguments, and evidence are the same. The moonsiff has given his decision on the same grounds. The grounds of appeal are the same. My confirmation of the moonsiff's decision rests on the same grounds.

THE 21ST MARCH 1850.

Case No. 393 of 1849.

Appeal from the decision of Dubeerooddeen Mahomed, Moonsiff of Madpore, dated the 30th October 1819.

Prankissen Sadoo, (Plaintiff,) Respondent,

versus

Madhub Chunder Hatwee, (Defendant,) Appellant.

THIS was a suit for rupees 112, due on account of arrears of rent.

The plaint states that the balance accrued upon a jumma paying a yearly rent of 48 rupees, registered in the name of Sonatun Hatwee.

The defendant first pleads that the names of many of the defendants have been wrongfully included in the suit, as their interests have all been transferred to Madhub Chunder Hatwee, who is now the sole proprietor; secondly, that the amount of jumma is 43 not 48 rupees; thirdly, that all arrears have been paid up by Madhub Chunder Hatwee, who produces dakhilas for the amount.

The moonsiff decided that the joint tenancy of the various defendants had been proved by the village papers and by the evidence of witnesses, the amount of jumma was proved by the canoongoe's papers, whereas Madhub Chunder had failed to prove his pottah at 43 rupees. The moonsiff rejects the dakhilas, because the only witnesses of any respectability are non-residents and ryuts of a talook in which Madhub Chunder is gomashdah; the receipts for the years in dispute are also given in one lump and signed by the plaintiff, whereas the dakhilas for other years record each payment on the date on which it was made, and are signed by the gomashdah of the village. For these reasons the moonsiff discredits the dakhilas, and decides in favor of the plaintiff.

The petition of appeal is a mere repetition of the defence. I confirm the decision of the moonsiff.

THE 25TH MARCH 1850.

Case No. 395 of 1849.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kytee, dated the 9th November 1849.

Anund Ram Khan, (Plaintiff,) Appellant,

versus

Ramessur Samunt, (Defendant,) Respondent.

PLAINT, rupees 5-14-11.

This was a suit for arrears of rent. The defendant produced dakhilas in proof of his payment. The plaintiff repudiates the dakhilas, stating that Dhurum Doss Dana, by whom they were signed, was not the gomashita of the village for the year 1255, in which the dakhilas are signed. To support this statement he has brought eight witnesses, besides Dhurum Doss Dana, who swear that he was not the gomashita of the village in question, also one Bissonath Bose, who swears that he himself was the gomashita, also some distraint proceedings carried on under the superintendence of Bissonath Bose as gomashita.

The defendant has brought eleven witnesses to prove that Dhurum Doss Dana was gomashita of the village in question, and also the record of some proceedings before the police in which he signed himself as gomashita of the village during the year in question.

The moonsiff made Dhurum Doss Dana write in his presence, and in spite of an attempt at disguise traced a resemblance to his handwriting in the dakhilas.

It also appears that the proceedings in distraint in which Bissonath Bose appeared as gomashita, were not commenced until after the institution of this suit. Under these circumstances, the moonsiff considers the signature before the police sufficient proof that Dhurum Doss Dana was gomashita. He upholds the dakhilas, and decrees in favor of the defendant. I confirm his decision.

THE 25TH MARCH 1850.

Case No. 398 of 1849.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kytee, dated the 9th November 1849.

Anund Ram Khan, (Plaintiff,) Appellant,

versus

Brijonath Samunt, (Defendant,) Respondent.

THE question to be tried in this case is exactly the same as in No. 395, namely, whether Dhurum Doss Dana was gomashita on the part of the plaintiff or not for the year 1255? The decision must necessarily be the same.

THE 25TH MARCH 1850.

Case No. 396 of 1849.

*Appeal from the decision of Gopal Chunder, Moonsiff of Bhattooreh,
dated the 6th November 1849.*

Ramdhun Doss, (Plaintiff,) Respondent,

Dinonath Ghose, Bydonath Ghose, and others, (Defendants,)
Appellants.

THIS was an action to recover the price of an auction lot, which the plaintiffs had bought and paid for at a sale held under date 29th March 1836, in execution of a decree at the instance of Gour-sunder Ghose, to whom the defendants were heirs. The sale was reversed under date August 7th, 1837, and the plaintiffs seek to recover the price which they had paid to the defendants.

The defendants put on record every possible plea, none of which are at all tenable except that the defendants had paid the money before and obtained receipts. They failed to prove the receipts, and the moonsiff decreed against them. I confirm his decision.

THE 25TH MARCH 1850.

Case No. 397 of 1849.

*Appeal from the decision of Gunga Churn Shome, Moonsiff of Selimabad,
dated the 5th November 1849.*

Ram Pershad Sein, (Plaintiff,) Appellant,

versus

Ram Coomar Juss, (Defendant,) Respondent.

PLAINT for rupees 37-13-12.

This was a suit for arrears of rent for the years 1251 to 1254, accruing on the defendant's jumma, paying a yearly rent of 12 rupees, 12 annas, 6 pie.

The defendant averred that he had paid the amount, and produced dakhilas signed by Churamoonee Hazra.

The plaintiff repudiated the dakhilas.

The moonsiff rejects the village papers on which the suit is brought as evidently got up for the occasion; he considers that the gomashthah, Churamoonee Hazra, ought to have been brought forward as a witness; he compares his signature on a vakalutnameh with that on the dakhilas, and, finding them to correspond, decrees in favor of the defendant.

I concur in the opinion expressed by the moonsiff as to the accounts produced by the plaintiff, and confirm his decision.

THE 25TH MARCH 1850.

Case No. 400 of 1849.

Appeal from the decision of Kasee Nazirooddeen, Moonsiff of Indoss, dated the 7th November 1849.

Fukeer Chund Mookerjea, Sadoo Churn Koond, and others,
(Plaintiffs,) Respondents,

versus

Seeb Narain Dutt and others, (Defendants,) Appellants.

THIS was a suit for possession of 18 beegahs of land, of which possession had been given, under Act IV. 1840, to defendants.

This case was tried on the 10th of August 1849, under which date the details will be found at the 72nd page of the Zillah Decisions for that month.

The plaintiffs were called on to prove their pottah, under which they claim to hold the brimoottur lands of Fukeer Chund Mookerjea at a fixed rate of 12 rupees 8 annas.

They established their claim to the full satisfaction of the moonsiff, who has given a decree in their favor. I consider the execution of the pottah by Fukeer Chund Mookerjea, and subsequent occupancy by the plaintiffs until forcibly ousted by Fukeer Chund's lessee, to have been most perfectly proven; and therefore uphold the decision of the moonsiff.

THE 26TH MARCH 1850.

Case No. 399 of 1849.

Appeal from the decision of Nobinkisto Paulit, Moonsiff of Cutwa, dated the 7th November 1849.

Kishen Dhun Dewee, (Plaintiff,) Respondent,

versus

Issur Dey, (Defendant,) Appellant.

THIS is a plaint for 7 rupees, 12 annas, 11 gundahs, for arrears of rent.

The defendant asserts that he threw up all his land with the exception of his dwelling house, in the preceding month of Jyete, and gave intimation to that effect in the collectorate. He had not paid rent for his house, because there was no jumma apportioned upon it.

The moonsiff decides that, although the defendant produces three witnesses to prove his resignation, yet that one of them admits that the zemindar refused to accept it. That the intimation in the collector's office was not binding on the zemindar, also that it is proved that the defendant continued to hold the land. By his own admission he holds the bheta or dwelling place, and it was not in his power to throw up part and reserve part.

In appeal, there is an attempt to prove that the talookdar assented to the resignation by cutting bamboos, thereby taking possession; the fact is not proven, and could hardly be admitted as evidence of the talookdar's assent to the defendant's throwing up his cultivation, and retaining his dwelling house. It is not probable that any zemindar would permit a ryut to do this. I confirm the decision of the moonsiff.

THE 26TH MARCH 1850.

Case No. 402 of 1849.

Appeal from the decision of Pearee Mohun Bonnerjea, Moonsiff of Kytee, dated the 10th November 1849.

Gooroochurn Pall *alias* Gooroo Pershad Pall and others, (Plaintiffs),
Respondents,

Junmejai Dey and others, (Defendants,) Appellants.

THIS is a suit on a bond dated 15th Jyte 1253.

The plaint states that Roop Ram Dey, the ancestor of the defendants, having balanced his accounts with Anund Ram Pall, the plaintiffs' uncle, admitted a balance against himself of rupees 191, of which he paid one rupee in cash and executed a bond for the rest, conditioned for payment by instalments, the whole sum being finally payable in 1246; that payments were regularly made up to 1242; that since the payments having stopped, this suit is brought by the plaintiffs to whom their uncle's interests have passed by gift.

The defendants deny the kistbundee, impute the suit to malice on the part of the plaintiffs, assert that the name of their father was Roopchurn not Roop Ram Dey, and that he died in 1234.

The moonsiff, in his decision, remarks that from a decision passed in 1238, it is evident that the defendants' father was alive in that year, that although the name Roop Ram Dey is written on the bond instead of Roopchurn Dey, yet that, as the execution of the bond by the father of the defendants is proved by four witnesses, the discrepancy in the name cannot vitiate it; the succession of the plaintiffs to the interests of their uncle is also proven: he then decides in favor of the plaintiffs.

The two points requiring attention in appeal are—first, the misdescription in the bond itself, in which the debtor is described as Roop Ram Dey instead of Roopchurn Dey. When the execution of the bond is proven, I concur with the moonsiff in considering this misdescription not very important. It in some degree takes off from the suspicion of the forgery, as a forgery would not have failed in accuracy of description. The next point is the great delay that has

occurred in instituting the suit, this argues carelessness but not fraud. I confirm the decision of the moonsiff as regards the principal sum of rupees 91 still due upon the bond, but do not consider the plaintiffs entitled to any interest.

THE 26TH MARCH 1850.

Case No. 36 of 1849.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 18th August 1849.

Moheschunder Ghosal, (Plaintiff,) Appellant,

versus

Goraie Naik, (Defendant,) Respondent.

PLAINTIFF sued the defendant upon a bond for rupees 350, dated 20th Assar 1249.

The defendant denies the bond, avers that the plaintiff borrowed 200 rupees from his son upon a bond, dated 30th Bysack 1249, and also 150 more from himself on another bond, dated 2nd Maugh 1249, that a decree had been gained upon the first bond, and a suit was lodged for the second, and that the only object of this suit was to neutralize the other two bonds.

The sudder ameen decreed in favor of the defendant, and declared the plaintiff's bond to be spurious. I was of the same opinion as the sudder ameen, but, as the case was a gross one, thought it better, with a view to ulterior proceedings, to call in the aid of a jury. A jury of three persons, the principal sudder ameen, the sudder ameen, and the city moonsiff, unanimously pronounced against the plaintiff on two issues out of three—first, as to the alteration of a date; secondly, as to the forgery of the defendant's handwriting: they also declared the bond to be spurious. Under these circumstances the decree of the lower court is confirmed, with full costs against the plaintiff.

The plaintiff will be made over to the magistrate for trial on a charge of uttering a false document.

ZILLAH WEST BURDWAN.

PRESENT: HENRY C. HAMILTON, ESQ., OFFICIATING JUDGE.

THE 1ST MARCH 1850.

Suit No. 74 of 1849.

*Appeal from the decision of Moulvee Abdool Uzeez, Moonsiff of Oundah,
dated the 26th of March 1849.*

Prawn Kishen and others, (Plaintiffs,)

versus

Kumul Ghose, and his surburakar, his son, Kunnye Ghose, (Defendants.)

SUIT for the recovery of rent with interest on ac-

count of 1253 B. S.,	rupees	10	15	9
Ditto 1254,		16	15	9
Interest,		3	0	0

Rupces 30 15 6

Plaintiff states that mouzah Meteaparah is their mouroosce lakhiraj, and defendants hold beegahs 7-16-2 of land therein at a ryotce jumma of Sicca rupees 15-14, Company's rupees 16-15-9; during the year 1253 B. S. defendants paid rupees 6, and as only one of the plaintiffs sued in the revenue courts their case, though ready, was nonsuited; and they now bring this joint action for the arrears of 1253, and the full rent of 1254 B. S., with interest.

Kumul Ghose, defendant, replies that there is no mouzah or lakhiraj by name Meteaparah. Plaintiffs, giving this name to their alleged lakhiraj, petitioned the revenue authorities by their servant Nawsain, and the case was brought for enquiry on the resumption register; a talookdar opposed it; plaintiffs sued various ryots for their rent in 1254 B. S., their cases were filed with the resumption nuthees; and as plaintiffs have not made the talookdar a party in this suit, it cannot stand. Plaintiffs, he alleges, were the durputneedars of mouzah Kuntool up to 1254 B. S., and they (defendants) hold beegahs 7, cottahs 10, at an annual jumma of rupees 18-10, which they pay to the talookdar: he holds no other land, and by looking at the "shomaree" papers it will appear there is no mouzah by name Meteaparah; and whilst plaintiffs were the durputneedars of mouzah Kuntool, they wished the ryots to unite with them in making out that

there were lakhiraj lands as set forth by plaintiffs, but they declined doing so, whereupon plaintiffs brought their case through a goindah, and no mouzah by name Meteaparah was forthcoming, and the case is under enquiry. He states that the mention of a kistbundee by plaintiffs is altogether false, and if any person has given one without his knowledge and during his absence it is no concern of his (defendant.) He is a mahajun, and could easily have paid his revenue if it had been due, &c.

Plaintiffs, in their jowabooljowab, reply that on their suing No. 380 in 1252 for their revenue of 1251 B. S., defendants did not pay, eventually they confessed judgment, a kistbundee was entered in the deputy collector's office, dated the 27th Bysack 1252 B. S., and a decree passed accordingly. In the suit for 1253 B. S., defendants never stated that there was no mouzah called Meteaparah, but named a "muholah" calling it Kuntool. They can prove that Meteaparah is their lakhiraj, and they beg that the case of Ramkaunt (appeal No. 75) may be heard simultaneously with this suit, as every thing has been stated therein, &c.

In the opinion of the moonsiff, plaintiffs have proved their case by the production of the original kistbundee of 1252 B. S., which was attested by the revenue authorities, and in which defendants' possession, and the amount jumma payable by them annually, as well as plaintiffs' mouroosce lakhiraj by name Meteaparah, are specified; the copy of a taidad, No. 30,768, also proves the lakhiraj; and it is useless for defendants to say now that they never cultivated plaintiffs' lands in direct opposition to their kistbundee. Until therefore the mouzah is resumed, or the collection of revenue is forbidden, plaintiffs are entitled to their rent. The lower court consequently decrees the full amount claimed with interest, &c.

Kunul Ghose, one of the defendants, appeals to the effect that plaintiffs have not proved their "hukyut," or tendered any kuboolcut, or account to prove he is their lakhiraj ryot. Secondly, an ameen should have been deputed to institute local enquiries into the case at issue. Thirdly, the summary revenue suit No. 357, on account of 1253 B. S., was nonsuited, because all the sharers did not join in it, and his kistbundee, therefore, which was only given to the party suing for 1251, in 1252 B. S. cannot be considered binding. He denies the kubool decree, and no enquiry was made on the subject. Fourthly, the summary revenue suits on account of 1254 B. S., have been filed with the resumption suit, and plaintiff has brought this action fraudulently; and he (defendant) urges that he pays his revenue at the rate of rupees 18 per annum on account of his Kuntool land to the talookdar, or durputneedar, and he cannot pay it twice.

The plaintiffs reply to the above in the usual way.

Nubgopal Moezoomdar, auction purchaser of putnee lot Dewanbarah, objects to the moonsiff's having upheld the lakhiraj jote, as

he is thereby affected; plaintiffs having no lakhiraj land or title as set forth by them.

This is a simple case of revenue between a lakhirajdar and his ryots. The kistbundee, which was formally executed before the revenue authorities, and mofussil accounts, filed by plaintiffs in suit No. 75, settle the amount of revenue which was paid annually by defendants, and clearly establish the fact of possession up to 1252 B. S., and the summary suits of subsequent years confirm it. It is not for the court to say that plaintiffs' lakhiraj title is valid. Plaintiff has produced copies of a taidad and the jumma wassil baquee accounts for several years, (*vide* appeal nuthee No. 75,) and no party offered any objection in the first instance claiming the *right* to the land at issue, so that there was nothing to settle beyond the point whether plaintiffs were or were not entitled to their *rent* according to their claim. The moonsiff's decree does not, in my opinion, convey any title to the plaintiffs, and until the objectors in appeal bring an action in the civil court against plaintiffs, or defendants throw up their lands legally, the latter must be liable to the payment of revenue to plaintiffs (respondents.) If, as advanced by defendants, they were no parties to the kistbundee decree, it was their duty to sue for its reversal, and I consider the revenue authorities are bound to dispose of the suits which plaintiffs have brought against defendants, and not to file them with the resumption suit as alleged.

Under the foregoing circumstances, and considering that plaintiff is entitled to his revenue as demanded by him from the defendants, I confirm the decree of the lower court and reject the appeal. Appellants to pay their costs respectively.

THE 1ST MARCH 1850.

Suit No. 75 of 1849.

Appeal from the decision of Moulvee Abdool Uzeez, Moonsiff of Oundah, dated the 26th of March 1849.

Ramkisshen Singh and others, (Plaintiffs.)

Ramkunt Paul, (Defendant,) Appellant.

Nubcoomar, objector.

SUIT for arrears of revenue on account of 1252 B. S., due on beegahs 6-12-12 of land, and laid at rupees 11-11-13, including interest.

This case is in its merits similar to appeal No. 74, only that the ryot is different, his annual jumma is Company's rupees 18-15, his kistbundee was dated the 23rd Aughun 1251 B. S., and was given on account of arrears of 1250 B. S.; besides which an authenticated copy of a deposition given in 1253 B. S. by defendant in a Regulation II. of 1819 suit, and copy of a petition presented in 1254 B. S. to the joint magistrate, as well as the jumma wassil baquee accounts

of several years are filed, from which it is clear that defendant was plaintiff's ryot on his lakhiraj land, and that he not only cultivated but lived upon it.

A decree was given in plaintiff's favor as in suit No. 74; and as my decision in that case must guide me in this, both being similar, this suit, if anything, being stronger in plaintiff's favor, I hereby reject the appeal, and confirm the lower court's decree. Costs to fall upon appellants respectively.

THE 1ST MARCH 1850.

Suit No. 76 of 1849.

Appeal from the decision of Moulvee Abdool Uzeez, Moonsiff of Oundah, dated the 26th of March 1849.

Ram Kishen Singh and others, (Plaintiffs,)

versus

Nubbeen Paul, (Defendant,) Appellant.

Nubcoomar, objector, or third party.

SUIT for arrears of rent due on beegahs 5, cottahs 10, chittacks 4 of land on account of				
1253 B. S.,	rupees	12	0	5 5
Ditto 1254 B. S.,		18	0	5 5
Interest,		3	4	0 0
		<hr/>		
		Rupees	33	4 10 10

The kistbundee in this suit is dated the 24th Assin 1251 B. S., it was given on account of arrears of 1250 B. S., and for it a kubool decree was passed, and besides it an authenticated copy of a petition which was presented to the joint magistrate on the 5th Srabun 1254 B. S., has been filed by the plaintiffs in proof of defendant's being his ryot on his lakhiraj land, and a decree was consequently given in plaintiffs' favor by the lower court as in cases Nos. 74 and 75, which are, in all essentials, similar to this suit; and as my decisions in those cases must govern this, I hereby confirm the decree of the lower court, and reject the appeal. Appellants to pay their own costs respectively.

THE 1ST MARCH 1850.

Suit No. 77 of 1849.

*Appeal from the decision of Moulvee Abdool Uzeez, Moonsiff of Oundah,
dated the 26th of March 1849.*

Ram Kishen Singh and others, (Plaintiffs,)

versus

Seeboo Paul Ryot, (Defendant.)

Nubcoomar, third party.

SUIT for arrears of rent due to plaintiff on account of his lakhiraj lands in Kiliarpoor, Bhowanipoor, and Meteparah, on account of 1253 B. S.,rupees

15 2 6

1254 B. S., „

34 2 6

Interest, „

4 12 0

Total, rupees ... 54 1 0

The land in the former mouzah is beegahs 3, cottahs 10, with a jumma of Sicca rupees 4-1, and in Meteparah, beegahs 10-15-11, with an annual jumma of Sicca rupees 27-15-5, altogether Company's rupees 34-2-6.

This case, in essentials, is similar to Nos. 74, 75, and 76, this day decided. The defendant's kistbundee is dated the 24th Bysack 1252, on account of 1251 B. S. Two taidads, Nos. 41021 and 30768, have been produced in support of plaintiff's lakhiraj title. The lower court decreed the case very properly, I consider, in plaintiff's favor; and I hereby, with reference to the above recorded decisions, confirm the decree and reject the appeal. Appellants to pay each his own costs.

THE 5TH MARCH 1850.

Suit No. 154 of 1848.

*Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanug-
gur, dated the 13th of March 1848.*

Ramdhun Chatterjea, (Plaintiff,)

versus

Nityanund Chuckerbutty, (Defendant,) Appellant.

SUIT for balance of revenue on account of 1253 B. S., principal rupees 52-1-5, interest rupees 6-6-15=rupees 58-8.

Plaintiff is the talookdar of lot Nyar, and defendant holds land with a jumma of rupees 53-1-5, of which 1 rupee was paid, and he sues for the balance. He states that he previously instituted suit under the summary suit laws before the revenue courts, but it was struck off.

Defendant admits that he cultivates the land with the jumma specified, but urges that he has paid up for 1253 B. S., and regularly pays his revenue, notwithstanding which plaintiff sued him in the deputy collector's office, and he was about filing a reply to the suit, when plaintiff called him, and, in the presence of respectable people, told him there was no use in quarrelling about it. Defendant replied that he had paid his rents for 1253 B. S., and had obtained his dakhilas from plaintiff's gomastah, which he showed and told him to examine, on which plaintiff agreed to their being correct, and as there was a balance of rupees 1-5-5 due from him, defendant, he paid it, and, on the 15th Jy 1254 B. S., plaintiff gave him a khalasee, or receipt in full. Plaintiff has through enmity brought this action, and has omitted all mention of the above circumstances, and, had his summary suit been good, he never would have allowed it to have been struck off.

Defendant's vakeel petitioned on the day the case was taken up that his client was at Gurbettah and he could not file his dakhilas; he also tendered a list of 9 witnesses in support of his case; but the lower court would not then admit it, and remarked that defendant had been on the 14th of February and 2nd March 1848 called upon to produce his proofs, and had failed to do so, and as this was a revenue case dakhilas were essential; that had defendant any such documents he would surely have filed them, it was as easy for him to file a list of his witnesses as to produce his dakhilas, and it did not appear that defendant was in attendance in any case at the joint magistrate's court at Gurbettah. Defendant's statement that he always regularly paid his revenue was false, as plaintiff had filed a copy of a kistbundee for the arrears of 1251 B. S., which showed the reverse to have been the case; further, it is not likely that defendant would give up all his dakhilas, or, if he obtained a receipt in full, that he would not have filed it in the summary suit in the deputy collector's office. For the above reasons the moonsiff decreed the case in plaintiff's favor, with costs.

Defendant, in appeal, urges that he tendered a list of respectable witnesses before whom plaintiff had settled his account; and as he was in attendance in a murder case at Gurbettah he could not produce his dakhilas: he advances that this case has been decided in opposition to Section 28, Regulation XXIII. 1814, and that plaintiff ought to have established his case by mofussil accounts, &c.

JUDGMENT.

Defendant having admitted the correctness of the jumma, plaintiff was not required further to prove it: again, the proceedings of the lower court are not opposed to Section 28, Regulation XXIII. of 1814 A. D., as defendant was twice called upon to produce his receipts, &c., and as the case rested entirely upon the dakhilas said to have been given by plaintiff to defendant, and these were not filed,

and only a list of witnesses was tendered on the day on which the case was about to be decided, and these witnesses could not have proved the said receipts until they had been in the first instance filed in court. I do not consider defendant should be now allowed to produce them: further, it is not likely that defendant, when the suit was first instituted before the revenue courts, would have failed to have produced the dakhilas, which were said to have been given to him by plaintiff's gomastah, or if a ruffanamah was subsequently effected, and plaintiff did, as alleged, give defendant a receipt in full, that he would not at once have shown it either before the deputy collector or before the lower court. I consider the decree of the lower court to be correct, and I hereby confirm it, rejecting the appeal.

THE 6TH MARCH 1850.

Suit No. 163 of 1848.

Appeal from the decision of Moulvee Noorul Hussein, Moonsiff of Bishenpoor, dated the 28th of March 1848.

Kistoo Nundee, (Plaintiff,)

versus

Soobhul Nundy, (Defendant.)

SUIT for the balance of a khata account, principal rupees 18-11-5, interest rupees 1-8=rupees 20, 3 annas, 3 pie.

Plaintiff states he trades in cotton, and that defendant, on the 6th Phalgun 1253 B. S., took from him rupees 18-14-15 in cotton, of which he paid 3 annas and 10 pie, and his account was written in his books. The remainder defendant agreed to pay in a few days, but, not doing so, plaintiff sues for it.

Defendant repudiates the transaction *in toto*, urges that a trade was carried on between his uncle, Muttro Nundy (deceased), and plaintiff from 1239 B. S., in cotton, &c., and as a heavy balance fell due, plaintiff gave a kistbundee for the amount, subsequently plaintiff wished to settle the account, and some cotton was brought, but a dispute having arisen about the price nothing was done and plaintiff took it away. Defendant intended to prosecute plaintiff, but he has been first, and brought this action fraudulently against him.

In the opinion of the moonsiff, plaintiff has proved his case by two witnesses, and the khata accounts, which have been produced by him, and defendant in a measure has agreed to the karbar, but never appeared to cause the attendance of his witnesses: he consequently decreed the case in plaintiff's favor.

In appeal, defendant urges that the account produced by plaintiff is not a regular khata, but only a species of memorandum, and as there are no witnesses to it, the two who have been brought forward by plaintiff can know nothing of it; further, the account should have been stamped, the evidence of plaintiff's witnesses is contradictory,

and he was never called upon for his proofs in this case, although his witnesses were sent for to establish the fact of his having been sick, &c.

JUDGMENT.

The moonsiff's proceedings are irregular. The case was proceeding *ex parte*, and after various delays on plaintiff's part and before his witnesses appeared, or had their depositions written down, defendant applied, by petition, that he was sick, and unavoidable delay had occurred on his part. On this, the moonsiff, on the 7th of March 1848, called for a medical certificate and proofs, and, the certificate not being forthcoming, the defendant, on the 13th idem, was directed to name his medical adviser, and to give in a list of his witnesses in proof of his sickness; he did so on the following day, and subpoenas were issued, but the case was decided on the 8th of the same month, and defendant did not appear intermediately to take oath agreeably to Construction No. 1126 against his witnesses. Hence, as the reply had been filed, and it is referred to by the lower court in the decree, the moonsiff was bound to call for the defendant's proofs, or he should not have alluded to it at all, particularly as plaintiff's witnesses appeared on the 7th and 8th of March, and defendant had pleaded sickness on the 7th idem. Defendant was never told to apply on oath for his witnesses to prove *his case*, but only on the 23rd of March he was directed to do so regarding his witnesses in support of his plea of *sickness*. Further, the account called by the lower court a "khata bhye" is no such thing, it is more a memorandum than a jumma khuruch account, and several leaves are stitched up together, on one of which an alleged account with defendant is written, but it is not signed by defendant, or attested by any subscribing witnesses, and though it need not, I consider, be stamped, still it should be accepted cautiously. The case being irregular, I have no alternative but to return it to the lower court for re-investigation. Ordered, therefore, that the appeal be admitted, and the case returned to the moonsiff for trial *de novo*. Value of stamp to be refunded.

THE 7TH MARCH 1850.

Suit No. 114 of 1848.

Appeal from the decision of Moulvee Asudollah, Moonsiff of Chowkee Radhanagore, dated the 24th of February 1848.

Musst. Dassee Monee, (Plaintiff,) Respondent,

versus

Cheeroo Dutt and others, (Defendants,) Appellants.

SUIT to recover maintenance allowance at the rate of rupees 2-8 monthly, laid at rupees 30.

Plaintiff states she is the widow of Muddoosoodun, defendant, brother of the defendants, that they were four brothers and they all

lived together; on her husband's death she was turned out of the house and lived in great distress with her mother: the defendants are in possession of his share in trade, &c., and, allowing her nothing for maintenance, she sues for it as above.

Cheeroo Dutt, defendant, replies that plaintiff's case is false, there were five brothers, they had no "mowroosee" property, lived on the profits of their shop and eat together, plaintiff's husband and their third brother died during their father's lifetime, and their widows were maintained by the remaining brothers: plaintiff's father's house is in their village and her mother is only living; plaintiff went there, the women could not agree and she asked them for money, but they replied that they had no land and recommended her to sell her jewels and obtained a livelihood: respectable people, however, having advised the brothers to give her something to get rid of her, they presented her with cash rupees 26, ornaments of the value of rupees 35, and 3 rupees' worth of vessels, altogether rupees 64, and on the 2nd of Phalgun 1251 B. S., plaintiff gave them a "dustburdaree." This defendant states that this case has been got up by plaintiff's uncle.

In the jowaub-ool-jowaub plaintiff repudiates the "dustburdaree," says she was only 13 or 14 years of age then, and from Kartick 1251 to Assar 1252 was at her mamoo's house at Moyapoor.

The other defendants did not reply.

The moonsiff argues that, although defendant has filed a "dustburdaree," and proved it by the writer (this is a mistake,) and by six witnesses, he does not believe it, because they are contradictory about the ornaments being given, and as the writer Lukhun repudiates having written the deed of release, how can he suppose it to be genuine? Further, such a document should have been registered, and although two individuals have appeared by petition as witnesses on behalf of plaintiff, and one of them, Lochun, has given his evidence in favor of defendant, he considers that these are not real witnesses, but they have been brought forward collusively. Plaintiff applies for rupees 2-8 per mensem, and shows that defendants possess property to the value of rupees 9,942, and proves it; but it is clear that defendants are tamoolies, shopkeepers, and one rupee per mensem should be an ample allowance, he consequently decrees to this extent in plaintiff's favor.

Cheeroo Dutt, defendant, appeals, urging that he is but a common shopkeeper, living on the profits derivable from his small shop: plaintiff has been separated from him and his brothers, and has given a "dustburdaree" to this effect, which has been proved by respectable brahmins and others: he urges that Lukhun, one of the witnesses, who appeared of himself, is the prime mover in this case, and is plaintiff's uncle, and though he may deny being the writer of the document, still, by comparing his writing with that which he (appellant) has brought forward, connected with a summary suit, the

two will prove alike and show that his denial is false: he states that he begged for a local enquiry but the moonsiff would not heed it, and he now prays that it may be effected: he concludes by saying that plaintiff has been put up to bring this action by bad people, and one rupee per mensem has been most unnecessarily decreed against him, &c.

JUDGMENT.

I consider plaintiff has in no way proved her case, and the evidence of her witnesses will in no way bear contrasting with the testimony given by defendants' witnesses. I consider the "khentonamah," which was given to defendant and his brothers by the plaintiff, is a valid document, and that it is not invalid because it was not registered: the evidence of Lukhun is not trustworthy, and as he is plaintiff's uncle it is not likely he would admit having written the "dustburdaree" for her, although by comparing his writing with his other writing on other documents it is clear that he wrote it. On the part of defendant there are no less than six respectable people who have proved this document: the village chowkeedar too has certified to it: and I cannot perceive why the moonsiff should have rejected the evidence of so many people. Again, it is preposterous to suppose that defendants carried on a trade of near 10,000 rupees capital, they are common "tamoolies," and certainly better able to give one rupee per mensem than 2 rupees 8 annas as sought by plaintiff; but, if they are wealthy, it does not appear how the lower court has fixed upon only one rupee. Under any circumstances, I cannot uphold the decree of the lower court, as I do not consider plaintiff has proved her case. I consequently decree the appeal, and dismiss her case, reversing the decision of the moonsiff. Costs to fall upon plaintiff, respondent.

THE 7TH MARCH 1850.

Suit No. 123 of 1848.

Appeal from the decision of Moulvee Asudollah, Moonsiff of Chowkee Radhanagore, dated the 24th of February 1848.

Musst. Dasse Monee, (Plaintiff,) Appellant,

Cheeroo Dutt and others, (Defendants,) Respondents.

THIS case is similar to the preceding appeal No. 114 of 1848. Plaintiff appeals, and begs that the full amount of maintenance claimed by her may be granted; but as I consider she has not proved her title to any thing, I dismiss the appeal for reasons assigned in the case above quoted, and reverse the decision of the lower court. Costs of suit to fall upon appellant.

THE 7TH MARCH 1850.

Suit No. 167 of 1848.

Appeal from the decision of Moulvee Noorul Hussein, Moonsiff of Bishenpoor, dated the 23rd of March 1848.

Gopaldoss Mohunt, (Plaintiff,) Appellant,

versus.

Golaub Singh and others, (Defendants.)

SUIT for balance of revenue aggregating rupees 1,490-6, inclusive of interest.

Plaintiff states that Nurothun Doss was the putnee talooqdar of lot Bassee, and in 1251 B. S. he distrained the crops of the ryots excluding Golaub Singh's, but was not paid in full. Nurothun then sold the talook including all antecedent balances up to 1251 B. S. to him (plaintiff,) and he is in possession. He adds that the former talooqdar, Burhmanund Ghose, took out execution of a decree No. 369, and caused beegahs 96-14 of land, bearing a fixed jumma of rupees 100 per annum, belonging to Beharee Singh and others, ryots of Burhmangong, mehal Bera, appertaining to lot Bassee, to be sold, when Golaub Singh purchased the jummye rights and the crops, but he never paid his rent for 1251 B. S. either to Nurothun or to him (plaintiff); during the two following years he paid a portion only of the revenue although he was in possession. He claims his rent from Golaub Singh from 1251 B. S., agreeably to Circular Order, dated 15th of October 1841, as he is responsible for it, being the purchaser of the jummye rights in Aughun 1251 B. S., and he lays his demand as follows:—

On account of 1251 B. S. jumma		Paid.	Balance.	Interest.	Total.
principal,	Rs. 100	Rs. 35 0 0	Rs. 65 0 0	Rs. 21 11 15	Rs. 86 13 15
1252,	" 100	" 84 15 0	" 15 1 0	" 5 1 10	" 20 2 10
1253,	" 100	" 63 1 5	" 36 14 15	" 5 1 10	" 42 0 5

Total,... 149 0 10

Defendant never replied. The cases proceeded *ex parte*. Plaintiff was called upon for his proofs on the 7th February 1848, and on the case being taken up the moonsiff asked plaintiff's vakeel why the plaintiff did not distrain Golaub's crops in 1251 B. S.; he replied that the former talookdar had recovered rupees 35 by distraint, and to two other questions, where were his mofussil accounts antecedent to 1251 B. S., and where were his proofs of having purchased antecedent balances; the vakeel replied he could not explain either without consulting his client. After this the moonsiff arrived at the conclusion from a copy of the judge's decree, dated 26th November 1844, by which Golaub Singh was the purchaser of the ryots' jummye rights and three years' mofussil accounts; that plaintiff was entitled to two years' rent, or on account of 1252 and 1253 B. S.,

but, as he had not filed his kubalah in proof of his having purchased antecedent balances, he could not admit his claim for 1251 B. S., for, though he says he purchased the lot on the 24th of Poos 1251 B. S., he has not shown how much is due and on what kistbundee for that year. The lower court then passed a decree in plaintiff's favor for the arrears of revenue due on account of the two years 1252 and 1253 B. S., adding that this decree was in no way to affect plaintiff's purchase or his demand for 1251 B. S., and that in no way was it to avail him.

Plaintiff appeals that he ought to have had his claim for 1251 B. S. decreed in his favor, as he purchased the lot by a kubalah in Poos 1251 B. S., in which antecedent balances were included; and had time been given to him by the lower court, he could have filed this document, and as the party in possession he was entitled to his rent.

JUDGMENT.

Had any party objected to the demand or contested the fact of plaintiff's possession in 1251 B. S., for which year he demanded his rent from the defendant, the case would have been different; but plaintiff had filed his regular jumma-wassil-bakee accounts for the three years 1251 to 1253 inclusive; and as they were admitted for the two last years, they might as easily have been accepted for 1251 B. S. Again, the lower court, when it interrogated plaintiff's vakeel about his client's kubalah and antecedent balances, should have allowed him time to file the former or further proof of his having had the latter transferred to him by the former talookdar, if the court had any doubt in the matter. This not having been done, plaintiff was unable to still further strengthen his case, and he certainly has grounds in consequence for appealing. I therefore admit his appeal, and remand the case to the lower court for re-investigation, and plaintiff can there, if he pleases, file his kubalah. The value of stamp paper to be refunded in the usual way.

THE 12TH MARCH 1850.

Suit No. 15 of 1848.

Appeal from the decision of Baboo Chunder Seekur Chowdry, Principal Sudder Ameen of West Burdwan, dated the 1st of July 1848.

Musst. Dassce Monce Debia, (Plaintiff,) Appellant,

versus

Ram Mohun Gosheine and others, (Defendants,) Respondents.

SUIT to obtain possession of beegahs 22-10 of land, bearing a jumma of rupees 16-2 per annum, in mouzah Jamjooree, appertaining to lot Khijooree, held by defendants as lakhiraj. Laid at rupees 280-15, also for revenue on account of 1252 B. S. at the above jumma, altogether rupees 297-1-17-2.

Plaintiff states she was the auction purchaser of the putnee estate called Khijooree, when it was sold for arrears due from Essan Bonnerjea, the former talookdar, at the putnee sales at the commencement of 1252 B. S. She adds that the former talookdar brought an action against the zemindar for a deduction in his annual jumma on account of mouzah Jamjooree, which the Gosheins were in possession of as lakhiraj and would not give up. The principal sudder ameen dismissed the case, because a portion of the land of Jamjooree belonged to talook Oondah, and the talookdar of lot Khijooree was the proper person to sue. In appeal Essan Bonnerjea obtained a decree, but on the special appeal the judge's decree was reversed, and the principal sudder ameen's decision upheld. The Gosheins, defendants, have been wrongfully in possession of beegahs 22-10 of plaintiff's mal land, and their ryots will not pay any revenue, because they say they pay it to the lakhirajdars. Plaintiff consequently brings an action against defendants for possession of this parcel of land, &c.

This suit was then transferred to the revenue authorities to be enquired into under Regulation II. 1819, and in the reply of Ram Mohun and Brijmohun Gosheins, defendants, filed before the deputy collector, they urge that the *entire* mouzah, named Jamjooree, was released by resumption suit No. 57, and their lakhiraj title upheld; that another small parcel, by name "Mehal Baree," was also released in suit No. 58, and that plaintiff has no claim to any other lakhiraj. They refer to suits No. 200 and No. 13971, in which they obtained decrees, and state that the small parcel of beegahs 10-10 in mouzah Jamjooree called "shagird pesha" is resumed land, and settled with the Oondah talookdars, and is particularly referred to in suit No. 200, and plaintiff has no right to any of the land for possession of which she now brings an action.

Plaintiff, in her jowaub-ool-jowaub, refers to resumption suit No. 57; argues that the land at issue was therein specified to be only 79 beegahs; that the said land, as also the 21 beegahs contested in suit No. 58, were both released, because the parcels were respectively under 100 beegahs each; and that the parcel of beegahs 22-10 included in this action, forms a portion of her mal land in mouzah Jamjooree, appertaining to her putnee estate Khijooree, and is *in no way connected with either of the above suits.*

The principal sudder ameen relies on the resumption decisions in cases Nos. 57 and 58, and on *fysallah* No. 13971, and, considering that these and the Sudder Court's decree upholding the former principal sudder ameen's decision are conclusive, and declare that the *entire* mouzah of Jamjooree, the lakhiraj burmottur of the Gosheins, defendants, has been released, he dismisses plaintiff's case, and takes no notice of her bynamah or her mofussil accounts, which were filed by her in support of her case, although she did not cause the attendance of her witnesses notwithstanding time was given her to do so.

Plaintiff appeals, and endeavours to show, by her bynamah and the principal sudder ameen's decree, which was upheld by the Sudder Dewanny, that there are *mal* lands in mouzah Jamjooree, appertaining to her putnee estate Khijooree, and that the lands at issue are not in any way included in the decisions referred to; but that she pays revenue for them to the zemindar from whom she holds her putnee. She says that defendants have not tendered any proofs or witnesses, and that a local enquiry should have been instituted into the matter. The appeal was admitted by my predecessor on the 1st of September 1849, without any reasons being assigned, and respondents have replied.

JUDGMENT.

This case is clearly incomplete, and the *only* point for decision, and which is specially noticed by plaintiff in her jowaub-ool-jowaub, has not been touched by the lower court. Is this land, beegahs 22-10, distinct from the resumption and other decrees, or is it included in them and thereby defendant's lakhiraj? Without a local enquiry I maintain this point cannot be settled, and it is not susceptible of adjudication simply by records and decrees. It is evident that plaintiff, as putneedar of lot Khijooree, *does* pay revenue to her zemindar, the Burdwan raja, for *mal arazee* included in the pottah or rather bynamah, dated the 2nd Assar 1242 B. S., which was granted to the former putneedar, to whose rights she (plaintiff) has succeeded at public sale, as a reference to this document clearly shows that in mouzah Jamjooree there were *revenue* lands appertaining to her putnee, and as she does pay revenue, and Jamjooree mouzah is specified in her bynamah, it is a natural inference that there are lands in the possession of some party, but which should yield their quota of rent to her. Again, in the resumption decrees the area of each lakhiraj title was stated, so that a measurement and comparison of the boundaries and kusrahs would easily prove whether plaintiff is right, or whether the land was defendant's *bonâ fide* lakhiraj released burmottur. Taking this view of the case, I remand it to the lower court for trial *de novo* with reference to the foregoing observations, decreeing the appeal. Costs to be settled hereafter, and the value of stamp paper to be refunded in the usual way.

THE 12TH MARCH 1850.

Suit No. 21 of 1848.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated the 16th of November 1848.

Praun Kishen Mitter, (Plaintiff,) Appellant,

versus

Jusodanundun Neogee and others, (Defendants,) Respondents.

SUIT to recover a bond debt of rupees 200 principal, and rupees 220 interest, also Sicca rupees 234-4, alleged to have been advanced to defendants, altogether laid at Company rupees 674-8-5.

Plaintiff states that Purtaubnarain, Jusodanundun, and Radhika Purshaud, deceased, received from him, for the shraud expenses of Brindabun Neogee, cash Sicca rupees 234-4, for which they agreed to give a separate "kurarnamali," and on the 1st of Aughun 1242 B. S., they borrowed from him for the purpose of paying in their revenue due on lot Dhurrumpore, the sum of rupees 200: for this they gave him a bond on the above date, promising to repay the amount in Assar 1243 B. S., with interest at one per cent. per mensem. Defendants never executed the separate agreement or paid plaintiff any portion due by the bond; and as they were all connections, and the heirs of Radhika Pershaud, deceased, were minors, he did not hurry in suing them; and as there was no stipulation about interest on the rupees 234-4 transaction, he has not sued for it, nor has he demanded more interest than is equal to the principal, and he proposes bringing a separate action for any other outstandings.

Purtaubnarain, defendant, replies that plaintiff cannot include in the same action debts due by a bond and debts otherwise due, and as Brindabun, the father of the defendant, died on the 12th of Jyte 1242 B. S., and his shraud and "mulhotshub" ceremonies were performed on the 11th Assar 1242 B. S., no less than 12 years, 2 months, and 11 days elapsed before the suit was brought on the 22nd Bhadoon 1254 B. S. He repudiates the bond, and says he never borrowed any money: old standing enmity exists between him and plaintiff: their cases have gone through the court, and plaintiff has become heavily indebted to him in a pauper suit No. 16 on account of wassilaut, to get rid of which he has brought forward this false action. He urges that plaintiff's plea to account for his delay is inadmissible. He refers to summary and foudjary suits, and says it is not possible he would have borrowed money from plaintiff while such was the case; and to get the better of a decree he has connived with the other defendants against him.

In his rejoinder, plaintiff denies having connived with the other defendants, refers to the bond in which it is stated that a separate agreement would be written for the "mulhotshub" expenses, and that 12 years have not expired since that date.

The other defendants did not reply, and no rudjowaub was filed.

The principal sudder ameen, after examining the witnesses, the writer of the bond, and the bond itself, is of opinion that it has been prepared for the occasion. Three of plaintiff's witnesses are extremely contradictory, and the signatures of the three individuals executing the bond are evidently written by one person, while each of the three parties, it is urged, signed separately for himself. The alleged writer of the bond, Nuggun Chunder Hajrah, one of the vakeels of the court, deposes that the three parties named, as well as Juggesur Ghose, executed a joint bond for rupees 200, but in that bond no mention of the mulhotshub expenses was made. Sheebonundun, a respectable person, with several others, were attesting

witnesses, and though the writing of the bond is like his writing, still it is not his. The principal sudder ameen alludes to various other discrepancies which are apparent in the depositions of the witnesses; observes that he compared the writing of Jusodanundun, one of the defendants, in another suit which was brought out of his office, and that the termination Neogee was not written the same; he does not think that plaintiff would have allowed 11 years to pass away without prosecuting upon the bond had it been genuine, and he thinks that the bond has been fabricated, and that it was plaintiff's object, in bringing forward this action against defendants, to get clear of the pauper suit No. 16, particularly as enmity exists between the parties. Further, on the money advanced for the "mulhotshul" expenses would surely have been supported by a bond of the same date as that on which the bond was executed: and the principal sudder ameen being of opinion that as an old sheet of stamp paper to cover every thing was not forthcoming, the plaintiff procured this one sheet and made mention therein of the shraud expenses. Under all the circumstances, he considered that plaintiff had not proved his case, and dismissed it, with costs.

In appeal, plaintiff urges that two of the three defendants received notice of the suit having been brought against them, but never heeded it: he has proved his bond, &c. under Section 15, Regulation III. 1793. Muggun Chundur Ilajrah, the writer of the bond, is his (plaintiff's) enemy, and he never required his deposition to be taken but objected to it, and urged it accordingly to the court, pointing out that he was leagued with defendants against him. He avers that the writing in the signature as regards the termination Neogee is not different; and as Jusodanundun, the writer, and one of the defendants did not appear, the court should not have noticed or referred to it. He goes into further particulars showing that there was no collusion and no enmity, and that he should not have been cast, &c.

The appeal, without reasons assigned, was admitted by my predecessor on the 7th of November 1849, and the reply to it by respondents has been filed as usual.

JUDGMENT.

A bond transaction must be tested by the bond; and I have no hesitation in declaring this one dated the 1st of Aghun 1242 B. S. to be a genuine forgery. The stamp paper on which it is engrossed was sold five months previously to a stranger, and the writing is perfectly fresh although the creases from folding up have worn out the paper in many places. This is very evident from looking at the writing of (and creases across) the date of sale, which has disappeared altogether, although in other places the writing is fresh; and the writer of the document having repudiated it, there can be no doubt of its being a forgery got up for the occasion, while it is hardly

probable that plaintiff would have allowed so many as 11 years to elapse without bringing it forward. I agree therefore with the lower court in thinking that plaintiff has not made out or proved his case, and I uphold its decision, dismissing appeal, with costs.

THE 13TH MARCH 1850.

Suit No. 187 of 1848.

Appeal from the decision of Moulvee Asudoolah, Moonsiff of Chowkee Radhanagore, dated the 13th of April 1848.

Gopal Chunder Mundul, talookdar of lot Bharah, Plaintiff,

versus

Muddoosoodun Ghose, Defendant.

The Maharajah of Burdwan, objector, Appellant.

SUIT to recover the value of about 100 saul trees, laid at rupees 12-8.

Plaintiff states that he holds the putnee of lot Bharah since 1237 B. S., and that defendant by force cut down, on the 15th Assin 1254 B. S., about 100 saul trees belonging to his jungle, and situated to the south of the "Ahur band," within the boundaries forming his talook as defined: he consequently sues for their value at 2 annas per tree.

Defendant replies by denying the cutting and carrying off of any tree belonging to plaintiff, and urges that the trees belong to his rakah jungle, and he felled about 25 of them. •

The maharanee of Burdwan sets forth her claim, and urges that plaintiff and defendant have combined for the purpose of obtaining thereby a decree which will serve them hereafter. She declares there is no junglebooree land in lot Bharah, and the jungle mentioned by plaintiff belongs to her property Ghat Bharah, the ryots of which lot used to pay their revenue to the rajbaree and to the putneedar. She affirms that neither plaintiff nor defendant has any right to the jungle, that plaintiff is the putneedar on the part of the maharajah, and is bound by the terms of his amulnamah not to interfere with her zemindaree, and that there is no jungle in lot Bharah.

On the death of the maharanee, the maharajah presented a petition to be admitted as her heir, and on the 28th of March 1848 he was called upon to file his proofs within eight days, but failing to do so, the lower court proceeded with the case on the 6th of April, and, having taken the evidence of witnesses on both sides, a decree was given in plaintiff's favor.

The maharajah now appeals, and urges that he had not sufficient time allowed him to file his "vurasut" proofs, and that an ishtahar should have been issued. He repeats what the maharanee advanced

in her "oozurdaree" petition in the first instance, and refers to the byenamah which was granted to the putneedars of lot Bharah, &c.

JUDGMENT.

Full time was allowed to the objector to file his proofs, and no reasons have been now shown which can warrant my interfering with the decree of the lower court, and the issue of an ishtehar was not necessary until the objector had first moved in the matter and filed his proofs of "vurasut." Under any circumstances the objector's case cannot be settled, except by his bringing an action as the zemindar of Ghat Bharah against the plaintiff as putneedar of his lot Bharah, for the real point at issue is whether the latter is entitled to cut down the trees and jungle which, it is alleged, pertain to his talook lot Bharah. Further, a reference to the original byenamah, dated the 22nd Poos 1237 B. S., which was filed when the case was argued, proves that lot Bharah, one mouzah, and every thing appertaining to it inclusive of *jungle*, and *without* mention being made of the maharanee's zemindaree, as set forth by the objector, was given out in putnee to Gopal Chunder plaintiff, at an annual jumma of rupees 1,305, by the former rajah of Burdwan, and hence this portion of the objector's statement is opposed to the truth. For the above reasons I hereby affirm the decree of the moonsiff, and reject the appeal.

THE 15TH MARCH 1850.

Suit No. 2 of 1850.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated the 9th of April 1847.

Musst. Dassee Mune, mother of Seeboo Chuckerbutty, a minor,
Pauper, Plaintiff,
versus

Jonardhun Chowdhry and others, Defendants.

To obtain possession of her share in mouzah Dabrah, &c., with wassilaut, laid at rupees 2,433-6-10-3.

Plaintiff says that her father, Narain Chowdhry, died without male issue, but five brothers lived then and eat together: on her father's death, her mother continued with the five brothers and died. She says that she is the heir, as she has a boy, consequently she is entitled to one out of the six shares; the defendants would not give her share, and she sued in case No. 7, and proved her right; but owing to a flaw in valuing the property she was nonsuited. She now amends the former action, and brings this action on 18 years' rent.

None of the defendants appeared or filed any reply, although they were served with notice, but the principal sudder ameen remarks that he called for the nuthee No. 7 referred to, and, by looking at

the reply which was filed in that suit by Buddinath Chowdhry, it appeared that this defendant denied having dispossessed plaintiff, but stated that the other defendants had done so, &c. The plaintiff too relied on the proofs, &c., which had been filed in that suit, and the principal sudder ameen called for a byewastah, but, without taking any proofs from the plaintiff, or even allowing the case to proceed *ex parte*, decreed one out of six shares in her favor against the dispossessing defendant, and wassilaut from the date of the institution of suit No. 7.

Plaintiff appeals against the order regarding wassilaut, and says she is entitled to it on account of the years during which she was ousted from her rights and share.

The appeal was admitted by my predecessor on the 26th January 1849, and respondents, though served with notice, have not appeared.

JUDGMENT.

The proceedings of the lower court are manifestly irregular. The court had no power to act upon any *documents* which were filed in another suit; but plaintiff, if she relied on them and wished for no other evidence, should have produced authenticated copies of her proofs in support of her claim: again, as the case was, in fact, progressing *ex parte*, the court should not have brought into its decision matter referred to in the *replies* which were filed in suit No. 7, and taken them for its guide, because a *reply* is no evidence of the nature indicated in the Circular of the Sudder Dewanny, dated 26th November 1847; further, if the *right* has been established, it stands to reason, wassilaut should be granted, and I do not perceive why they should not have effect from 1238 B. S., as easily as from the date of the institution of suit No. 7. The evidence too in this point was doubtful, and hence the greater necessity was there for summoning the witnesses in suit No. 7, for the purpose of cross-examining them.

For the above reasons, I remand the case for trial *de novo*, and reverse the decision of the lower court. The appeal is decreed, and costs will be adjusted hereafter.

THE 15TH MARCH 1850.

Suit No. 1 of 1849.

Appeal from the decision of Baboo Chunder Seekur Chowdhry, Principal Sudder Ameen of West Burdwan, dated the 28th of December 1848.

The Maharajah of Burdwan, Plaintiff,

versus

Ranee Chundea Munnee and others, Defendants.

Ranee Chundea Munnee Coomaree, Appellant.

SUIT for balance of revenue due on account of 1253 B. S. principal rupees 433-4-8, interest rupees 41-9-8, = rupees 474-14-4.

Plaintiff states that the rance defendant, agreeably to a decision in a special appeal, obtained possession of mehal Rannuggur in the month of Aghun 1253 B. S., and did not pay her revenue, rupees 433-4-8, for that year: previously to her being put in possession Gudadhur Bonnerjea was the putneedar, and he sues both for the year's revenue, with interest due on defaulting kists.

Gudadhur Bonnerjea defendant replies that he was in possession as stated, but he has been made a party without any cause whatever.

The rance replies by agreeing to the jumma and to her being in possession, but urges that it is not customary to pay interest on mocrurree estates.

The principal sudder ameen says that he gave defendant Rance Coomaree seven days from the 31st July 1848, to produce proof of her not being liable to the payment of interest as alleged, and plaintiff was directed to file his kistbundee and other proofs. The latter established his case, but the defendant failed to produce any proof or documents, and as she agreed to the jumma and to being in possession, he decreed the case in plaintiff's favor: the defendants to pay their own costs, and plaintiff's costs to fall on the rance defendant.

The rance appeals against payment of interest, urges that the mocrurree jumma of mehal Rannuggur has been, previous to the Hon'ble Company's accession to the Dewanny, fixed at Sicca rupees 496-3-7-2 per annum, the revenue has been always paid at the end of the year, and interest on the arrears calculated from commencement of the following year; and her father-in-law, Gopeenath Dhull, never wrote any ikrar kistbundee, and that for the last 39 years (the alleged kistbundee having been written in 1217 B. S.) the rajah has always recovered his revenue by summary suits and in other ways, and no mention of a kistbundee has been ever made; on the contrary interest has been always calculated from the following year, and these fysicalahs have never been reversed, and interest ought not to have been granted by the principal sudder ameen. They can produce the summary suit decrees if time be given to them.

JUDGMENT.

No one objected to the kistbundee and ikrar, which were given, under date the 27th Phalgun 1217 B. S. by Gopeenath Dhull shazada, to the former Burdwan rajah, which are filed in the record, and though defendant (appellant) is now anxious to file copies of summary suit decrees, I consider she cannot do so, because she had time given her in the first instance, and failed to prove that she was not liable to the payment of interest. In these two documents there is a condition entered that the party engaging shall pay the revenue monthly according to the kistbundee, and if there is a default then interest will be chargeable under the Regulations. Whether these documents have been or not produced in any summary suit cannot

prevent plaintiff suing for his rent, and interest on arrears agreeably thereto; and as appellant failed in the lower court to establish her case, I see no reason for interfering with the decree of the lower court, and hereby confirm it, rejecting the appeal.

THE 18TH MARCH 1850.

Suit No. 188 of 1848.

Appeal from the decision of Baboo Mohunlall Panday, Moonsiff of Burjorah, dated the 18th of February 1848.

Khettronath Banerjca, (Plaintiff,) Appellant,

versus

Surroop Mundle and the heirs of Sheedam Mundle, (Defendants.)

SUIT to recover a debt due on a kurrarnamah, principal Sicca rupees 23-8, interest rupees 23-8 = rupees 47, or Company's rupees 50-2.

Plaintiff states that Surroop and Sheedam came to a settlement of their accounts with him, making it Sicca rupees 23-8, and giving him a kurrarnamah on the 22nd Assar 1242 B. S., with a promise that they would pay the money in Phalgooh following. Sheedam is since deceased, and his heirs being in possession, and the debt not having been liquidated, plaintiff sues for it.

Surroop Mundle defendant repudiates the borrowing and execution of the agreement: says he was sick at mouzah Seemooleeah, in chowkee Sonainookhy, and never left his home up to Assin. He adds that he has on several occasions been a witness against plaintiff, in consequence of which he owes him, defendant, a grudge, and has brought this action against him in this chowkee.

Doorgamunnee, Sheedam's heir, defendant, replies that she lives at Kautabara, within the Bishenpoor chowkee, and not at Sheetlah, in Burjorah; that notice was not duly served upon her, and the witnesses who say otherwise are false.

In his jowaub-ool-jowaub plaintiff denies there being any enmity between him and defendant, and says that Doorgamunnee occasionally comes to her husband's former house at Seetlah, so that the notice was correctly served.

The moonsiff cannot believe plaintiff's witnesses, or the kurrarnamah, and, considering that defendant Sheedam Mundle has proved his having been sick as advanced by him, he dismisses the case, with costs.

The least the moonsiff should have done was to state *why* he could not credit the testimony of plaintiff's witnesses, and preferred the evidence of those produced by defendant. The kurrarnamah is written on a stamp paper of 2 annas' value, and is alleged to have been executed on the 18th June 1835, and though it may appear to be a suspicious document from having been kept back for about

11 years, it does not follow that it *should* be a forgery; at all events if it *was* thought so, the *reasons* should have been given for condemning it; and as plaintiff, in his appeal, has objected to the decision of the lower court on this score, and asserts that he has sufficiently proved his agreement bond, I have no alternative but to remand the case to have the omissions rectified. Ordered, therefore, that the appeal be decreed, and the case remanded for re-investigation with reference to the foregoing observations. Value of stamp paper to be refunded in the usual way.

THE 18TH MARCH 1850.

Suit No. 196th of 1848.

Appeal from the decision of Moulvee Noorul Hossein, Moonsiff of Bishen-poor, dated the 15th of April 1848.

Musst. Bushoo Bustomee and Nemoye Doss, (Plaintiffs,) Appellants,

versus

Juggutdoollubh Banerjea and others, Defendants.

Chundermonee Thakooranee, objector.

SUIT to obtain possession of 15 cottahs of jummyee land in part of a parcel of 7 beegahs in mouzah Cheyntiah, called Numoogulleah, laid at rupees 15.

Plaintiffs state that Mohun Goshein held 7 beegahs of lakhiraj land as above, and Surroop Doss, father of Musst. Bushoo, one of the plaintiffs, took it at a jumma of rupees 4-8 per annum. Surroop died, and the two plaintiffs were left as his heirs, and for the last 20 or 25 years they have paid one rupee as of old to the maliks of lot Shamdoss-poor, and the residue to the lakhirajdars or their heirs, having received dakhilas for the same, plaintiffs allege that they ploughed and prepared the land, but on the 25th of Assar 1254 B. S., Juggutdoollubh, one of the defendants, accompanied with the other defendants, dispossessed them from 15 cottahs: they consequently sue for possession.

Gunganarain defendant replies that the land is his mouroosee punchuck lakhiraj burmuttur, appertaining to lot Shamdoss-poor, and plaintiffs should have made the maliks a party to the suit: he refers to precedents of the principal sudder ameen and the moonsiff, No. 4516, dated 30th March 1837, and No. 1630, dated 8th March 1838, which are against plaintiffs' bringing this action, states that as Surroop Doss died without issue his rights were transferred to Gooroochurn Doss, and the disputed land does not belong to plaintiffs.

Toolseq defendant replies as above.

Chundermonee Thakooranee, oozurdar, supports plaintiffs.

An ameen was deputed, various documents have been filed, evidence has been taken on both sides, and the moonsiff is of opinion that a ryot's suit of this nature cannot hold good with reference to

the decision of the former moonsiff of chowkee Bishenpoor, which was upheld in appeal by the principal sudder ameen of Burdwan, both of which decisions have been referred to by him; and as the point at issue would decide a *right*, plaintiffs cannot proceed until they make the malik, or owner of the land, a party to the suit as no proof of the Goshein's right to the land in dispute has been produced: further, the court is of opinion that the heirs of the lakhirajdars have collusively brought this action through the medium of plaintiffs, or they would have tendered some proofs, or been made a party to the suit. Such not being the case, the moonsiff dismissed it, with costs, &c.

In appeal, plaintiffs urge that though the malik has not been made a party to the suit, he has filed a claim in support of plaintiffs: they allege that they are in possession of beegahs 6-5, in part of their 7 beegahs, and they sue for possession of their jummyee rights in 15 cottahs, from which they have been ousted by defendants, as proved by their witnesses; they urge that the precedents quoted do not apply, they have filed their dakhilas, and several cases of this nature have already been decided without the malik being made a party to it. This case was taken up on the 14th instant, and again this day.

JUDGMENT.

The lower court was correct, I consider, in dismissing the case, for, whether the precedents quoted are or are not applicable, it is clear that plaintiff has not produced any pottah from the lakhirajdar, nor has the claimant, lakhirajdar, filed any counterpart or *kuboolut*, which was given to him by the ryot, in proof of his possessing any jummyee interest in the land at issue, nor do the dakhilas show for what land the rents have been paid. If, therefore, in a suit of this nature, the jummyut right was to be upheld, it would be tantamount to giving a right to the malik in the land, which cannot be until that malik becomes a party directly as plaintiff, or indirectly as a defendant; and as I am of opinion plaintiff has not established his title, and nothing has been shown to prove that he is the ryot on the part of the lakhirajdar of the land in dispute, I uphold the decree of the lower court, and reject the appeal, with costs.

THE 18TH MARCH 1850.

Suit No. 367. of 1848.

Appeal from the decision of Moulvee Asudoolah, Moonsiff of Radhanugur, dated the 30th of August 1848.

Gopal Chunder Mundle, (Plaintiff,) Respondent,

versus

Gooroo Churn Paul, (Defendant,) Appellant.

1, Dossee Munnee, 2, Kishen Mundul and others, and 3, Sree Munnee Mohun Gosheini, Claimants separately.

SUIT to enhance the rent of beegahs 9-5, in mouzah Hurrynugur, fixing it at rupees 44-5-18-2, from 1253 B. S.

Plaintiff states that the defendant holds the above land at less than the proper assessment; he served him with notice on the 2nd Jyte 1253 B. S., but never appeared, he has consequently assessed the land as under, and sues for it—

	beegahs.			Co.'s Rs.			
One parcel of rice land,.....	6	4	8	14	4	19	1
Ditto ditto fysullah,	0	10	8	4	3	1	1
Ditto homestead,	2	10	0	25	13	18	0
Total,	9	5	0	44	5	18	2

Defendant replies that notice was not served, plaintiff is not the talookdar, the talook being current in the name of Narain Mundle (deceased) and others, and as the heirs of Narain Mundle are of age they should have been made a party in the action. He can prove that the ishtehar was not issued, and that he is in possession of only beegahs 7-4, including the Palgurria pyewust lands, with a jumma of rupees 19-8, and not beegahs 9-5, as stated by plaintiff. His brother, Kishen Paul, is the servant of the Jungle Mehal zemindar; and as there are disputes about jungle between them, plaintiff has brought this action fraudulently against him, defendant. He urges that he and his ancestors, long previous to the Hon'ble Company's accession to the Dewanny, have all along paid their rent at rupees 19-8, and nobody has interfered with them; that in the year 1218 B. S. plaintiff's brother, Narain Mundle, and his uncle, Gour Mundle, obtained the putnee of this lot, and, finding they could not get any thing more out of him, or their talook, they gave defendant a sunnud pottah on the 5th Jyte 1219 B. S., and received their rent regularly up to 1235 B. S. On Narain Mundle's death plaintiff managed the estate, and from 1236 to 1253 B. S. he was paid the same amount of revenue, for which defendant has received dakhilas. He pleads, therefore, that plaintiff has now no right to attempt to enhance his rent.

The first claimant says she is one of the heirs of Gour Mundle, and plaintiff has brought this action to injure her, Musst. Dossee Munnee.

The second claimant, Kishoo Pershaud Mundle, and others say they are the heirs of Narain Mundle, deceased, and his name is still current as the talookdar.

The third claimant, Sree Munnee Mohun Goshein, lays claim to beegahs of land in part of that in dispute.

The moonsiff overrules the plea of defendant, and the precedents he has adduced in support of it, and does not allow that defendant, though he may have been in possession at rupees 19-8, for several years, is not liable to the payment of an enhanced rent. With respect to the claimants urging their proprietary rights, the moonsiff argues that plaintiff has proved his possession by a summary suit decision, he therefore sets them aside, and expunges the disputed claim of Sree Munnee Mohun Goshein from this suit. The area by the ameen who was deputed was found to be beegahs 11-6-8, and the jumma payable thereon rupees 40-4-16; from this beegahs 3-0-14-2, with a jumma of rupees 6-8-14-1, having been deducted on account of the expunged lands, there remained beegahs 8-5-13-2, with a jumma of Sicca rupees 31-3-18, or Company's rupees 33-5-3, which the moonsiff decreed in plaintiff's favor from 1253 B. S.

In appeal, defendant urges that plaintiff is not the talookdar, that the heirs have protested against his being admitted as such, and that the summary suit decree is not sufficient to prove his title. He objects to the rates and to his sunnudy pottah having been rejected, and he could have proved the genuineness of the latter, if called upon. With respect to the ameen's rates he, in the first instance, petitioned the moonsiff and a kyfeut was called for, and his objections were never attended to or disposed of. He advances that the lands were not all measured in his presence, and the standard was not the correct one, or his rates and area would have come out correctly, &c.

Respondents have appeared without notice, and the case argued on the 14th and concluded to-day.

JUDGMENT.

The decision I consider to be faulty and incomplete, and the plaintiff ought, I think, to have been nonsuited, considering that the names of Narain Mundle and others are recorded as the putneedars of this estate; and the heirs, claimants in this case, object to plaintiff suing defendant as sole proprietor. The moonsiff should not have acted solely on a summary suit decision, and have thrown the claimants over; this was a good ground for a nonsuit, particularly when defendant produced a pottah, the genuineness of which has not been refuted, or even alluded to by the moonsiff, agreeably to which the rent was fixed by the original proprietors so long ago as the 5th Jyete 1219 B. S., and as the old putneedars, ancestors of the present,

have allowed this sunnud, or pottah to be current during their occupancy for nearly thirty-five years without calling for an enhancement, it is a question I think whether they are not barred by the statute of limitation from so doing now. The moonsiff has made no mention in his decision of the objections, which were advanced by defendant against the notice not having been duly served; nor has he disposed of the charges which were brought forward against the ameen, although he appears to have called for a kyfeut from him on the subject: these are errors of omission, which require to be rectified; and further, it is not sufficient to take the ameen's rates and measurements for his guide. The moonsiff should distinctly give his opinion thereupon, taking the purgunnah rates, and fixing the assessment accordingly with reference to the correct standard current in the village and in its neighbourhood. And finally, with reference to the disputed land which has been expunged, it should be stated whether this has been done by the consent of all parties, or how, as it forms a portion of the land specified in the plaint. With reference to the foregoing observations I remand the case to the moonsiff, in order that he may bring it again on his file, and decide it *de novo*, correcting all errors of omission and commission. The appeal is therefore decreed, and value of stamp paper is to be refunded in the usual way.

THE 23RD MARCH 1850.

Suit No. 96 of 1848.

Appeal from the decision of Baboo Gopeekishen Banerjea, Moonsiff of Kotulpoor, dated the 14th of February 1848.

Ramdhun Chatterjea, Plaintiff,

versus

Bheekoo Khan, Neeamut Khan, and Golamee Khan, Defendants.

SUIT to recover the amount of a kistbundee, laid at rupees 50, principal, and interest, rupees 40-3-2=rupees 90-3-2.

Plaintiff states that he is the talookdar of lot Kowalpara, in which defendant Bheekun is a ryot: he had occasion to sue him for his rent, and a settlement of accounts was effected on the 17th Kartick 1244 B. S. for rupees 31-5 7½, the other two defendants having become Bheekun's surety; the money was to be paid, rupees 15 on the 19th Kartick 1244 B. S., and rupees 16-5-7-2 on the 15th of Aughun; Bheekun failed to make good his instalments, and a fresh arrangement was made, whereby he gave him (plaintiff) a kistbundee on the 25th of Assin 1246 B. S. for rupees 50, promising to pay rupees 15 in Phalgun 1246, rupees 15 in Kartick 1247, and rupees 10 in the months of Phalgun 1247 B. S. and Kartick 1248 B. S. On this kistbundee, therefore, as the amount has not been liquidated, plaintiff sues all the defendants.

Bheekun defendant replies by denying the kistbundee, and as plaintiff has not properly filed his action, and it is not clear how the other two defendants are implicated, he cannot reply to him any better.

Defendants Neeamut and Golamee deny the "kurarnamah," or agreement, and say they were no party to it.

The moonsiff does not credit the "kurarnamah," or kistbundee, upon which plaintiff sues, but he thinks that defendants are responsible according to their own defence and plaintiff's statement: he observes that plaintiff's witnesses to the agreement are very contradictory in their evidence; that the stamp paper on which it was executed was purchased two months previously, and in another district; that it is not clear where it was written, and if it had been at Kowalpara, there would have been witnesses to it in that village; that plaintiff cannot show he was in possession of the talook before 1244 B. S., so that there should have been bukyah balances for which this kistbundee was executed; that the years of these balances are not specified, and as plaintiff was so particular about the first kistbundee he would not have been so remiss about the second or the one at issue: and after arguing in favor of the first kistbundee, he decrees the amount stated to be due thereupon, with costs.

Bheekun defendant, of course, appeals for himself and for the other defendants who have left this part of the country: he urges that the case should have been dismissed, as plaintiff has failed to establish the kistbundee, or agreement of the 25th Assin 1246 B. S. on which he sues, and the former kistbundee, he avers, has no concern with the case at issue.

The appeal was admitted on the 1st of February 1850, but the respondents have not appeared. I proceed therefore to pass my opinion on the case.

JUDGMENT.

I cannot account for this decision. Plaintiff sues distinctly on an agreement, dated the 25th Assin 1246 B. S. Nobody but Bheekun was responsible thereby; and notwithstanding the moonsiff vitiates this very document on very good grounds and arguments, he takes up a previous kistbundee, not at issue, and decrees against all the defendants agreeably thereto. Defendants Neeamut and Golamee are in no way, by plaintiff's own showing, a party to the kistbundee on which plaintiff sues, and how the moonsiff can make them so I cannot perceive. I quite agree with the lower court in vitiating and discrediting the document, be it called a "kurarnamah," or kistbundee, dated the 25th Assin 1246 B. S., but I cannot confirm his decree as it stands, and, having admitted the appeal, I decree it, reversing the decision of the lower court, and I dismiss plaintiff's case. Costs to be paid throughout the courts by plaintiff (respondent.)

THE 23RD MARCH 1850.

Suit No. 97 of 1848.

Appeal from the decision of Baboo Gopee Kishen Banerjea, Moonsiff of Chowkee Kotulpoor, dated the 14th of February 1848.

* Ramdhun Chatterjea, (Plaintiff,) Appellant,

versus

Bhekoo Khan and others, (Defendants,) Respondents.

THIS case is precisely similar to the one No. 96, this day decided, only the plaintiff is the appellant, and as my decision in appeal No. 96 must govern this, I need not repeat my arguments; but I simply dismiss the appeal, and by so doing his (plaintiff's) case has also becomes dismissed, and the lower court's decree reversed: all costs to fall upon appellants.

THE 23RD MARCH 1850.

Suit No. 110 of 1848.

Appeal from the decision of Moulee Mazzum Hossein, Moonsiff of Madhubgunge, dated the 9th of March 1848.

Muttrou Paul Chooteer and others, (Plaintiffs,) Respondents,

versus

Gopaul Paul and others, (Defendants,) Appellants.

Gopaul Paul and Soodaram Paul, Appellants.

SUIT,* for balance of revenue due on 10 cottahs of land for the years 1252 and 1253 B. S., laid at rupees 14-1-4.

Plaintiffs state that they are in possession of various ancestral jumnyee lands in the aruzee mehal, called mouzah Assoor Ally, directly by themselves as well as by their under-tenants. The jumma is recorded in the name of Muttrou Paul, one of the plaintiffs, in the zemindar's sirishtah. They, plaintiffs, jointly pay their rent to the talookdar, receiving dakhilas in the name of the said Muttrou; and they add that their ancestors underlet to those of defendants two parcels of land, one of 6 and the other of 4 cottahs, altogether 10 cottahs, at the low jumma of rupees 2-12 per annum; for years past they have received this rent from defendants, but, only one rupee having been liquidated on account of the years 1252 and 1253 B. S., they have brought this action against defendant for the balance, or Sicca rupees 4-9, equal to Company's rupees 4-13-11, besides interest. They have at the same time included in their plaint the amount value, rupees 9, of the land at issue, lest they may be opposed by the defendant in their rights thereon, their suit is therefore for rupees 14-1-4.

Gopaul Paul and Soodaram defendants reply by denying that they hold any land under plaintiffs. They urge that they live on the

north bank of a tank called "Paul Pooshkornee," which was excavated by their ancestors and is their lakhiraj. They hold a deed in the name of their ancestor Brijo Paul, from which it will appear that they and their ancestors previously have all along been in undisturbed possession of the said tank as their lakhiraj; and had it belonged to plaintiffs, they would most assuredly have stated how they hold it, whether as lakhiraj or mal, and would have tendered proofs in support of it. They advance that as the suit was simply for rent, the value of the land need not have been included in the suit; further, that plaintiffs have altogether omitted to mention how, when, and to whom the lands were under-let, and have evidently connived with the talookdar.

Musst. Gobind Munnee, talookdar of the aruzee mèhal, defendant, replies by supporting the other defendant, urging that plaintiffs have brought this action at the instigation of one Anund Day, an enemy of her's: plaintiffs are only in possession of beegahs 9-13, with a jumma of rupees 35-6, and defendant's homestead is not included therein, but is situated on the embankment of the tank named "Paul Pooshkornee," their hereditary lakhiraj.

Mookta Munnee Dossee, claimant, sets forth that she has a lien on the property equally with the defendants, and she should not have been excluded.

Choppa Bewah, defendant, replies to the same purport as Gopaul Paul, defendant.

Plaintiffs, in their jowaub-ool-jowaub, urge that the tank is of very old date, has not any embankment around it, and the defendants do not live upon them. Plaintiffs reside on some jummyec land situated to the east of the tank, and their homestead adjoins in a straight line running eastward, the disputed jummyec land upon which defendants have built. This land has no connection whatever with the embankments of the tank as alleged by defendants, and it was never dug by their (defendants') ancestors, and though defendants now hold an 8 annas share, their (plaintiffs') ancestors formerly held it exclusively as their own. They urge that their ancestor, Dhurum Doss Paul, under-let the disputed land to Huree Kishen, the ancestor of defendants; and though they cannot say whether there was any interchange of documents owing to the lapse of so many years, they can prove by witnesses that their statement is true. They add they are entitled to their claim by Construction No. 696.

With reference to the reply made by defendant Gobind Munnee, plaintiffs state that, on the 27th Chyete 1223 B. S., Bhagbut, their ancestor, had his pottah renewed for beegahs 7-7-1, at the annual jumma of rupees 27, by their talookdars Gocool Chunder Bannerjee, &c., and the contested land is comprised therein: they urge that they subsequently acquired another parcel, which was held by Brindabun Paul, and the two make up the total beegahs 9-13, with a rent of rupees 30-14, and not of 35-6, as declared by defendants. The

lease was to run in the name of Bhagbut, and since his death plaintiffs have been in possession.

Defendants, in their *rud-jowaub*, repeat their former arguments, adding that plaintiffs' statement, to the effect that they are co-partners with them (defendants) in the Paul Pooshkornee, is altogether false, it belonging solely to them. They hold no land under plaintiffs, and never paid them any rent. The former talookdar, in 1234 B. S., attached the said tank and their homestead as appertaining to his *mal* land, upon which their (defendants') ancestors petitioned him, whereupon the agent of the said talookdar enquired into the matter and released the whole, giving them a *sunnud* laying down the boundaries. They add that they have only now found this document, or they would have alluded to it in their reply. Had plaintiffs' case been good, they would have produced documents in support thereof; the depositions of the witnesses are contradictory; the construction quoted does not apply; and the point at issue is not in reality about rent, but whether or not the tenure from which it is demanded is *lakhiraj* or *mal*.

The moonsiff is of opinion that both parties have been playing false, and he comes to this decision after having personally inspected the lands in dispute. Plaintiffs represented that the contested land consisted of two parcels, and was situated on the north side of the "Paul Pooshkornee," thereby concealing the existence of an embankment on the north side; but the moonsiff found that there were banks, though small. He therefore considered the plaintiffs to have given an incorrect boundary, and one intended to suit their own purpose. Defendants' plea that their homestead is included in the bank of the "Paul Pooshkornee," the moonsiff does not admit; for it appeared that the east and west embankments were very small, and although the south bank which probably is in its original state and proved by the moonsiff's measurement to be 2 cottahs and $13\frac{1}{2}$ gundahs, yet it is not possible that the defendants' homestead, &c., the area of which is 8 cottahs and $13\frac{1}{2}$ gundahs, can be included in the north bank, even allowing that it comprises as much land as the south. He rejects the evidence of the *gomastah* Gunga Narain Chowdry; and with respect to the "char," dated the 5th Sawun 1234 B. S., which has been filed by defendants, and was granted by Ram Joye Bonnerjea, former talookdar, he considers it to be a forgery, the paper appearing to be old and the writing fresh, and no proof in support of it having been tendered. He points out various discrepancies apparent in the depositions of defendants' witnesses, whom he considers low caste men, and he cannot believe that on other land, independent of their homestead, defendants' ancestors used to burn dead bodies, for had such been the case the practice would not have been discontinued; and further, an old house was pointed out to the moonsiff situated in their (defendants') compound, but belonging to plaintiffs, which, it was alleged, plaintiffs had illegally built

some 20 or 30 years ago, and this he thinks would never have been allowed, but defendants would have brought an action against plaintiffs for usurping their land; and as he is satisfied that defendants are their under-ryots, holding their homestead and the other parcel (exclusive of the quantity specified in dag No. 3 of his measurement, which defendants agree to plaintiffs being in possession of,) he decrees plaintiffs' claim for rent, &c.

Defendants appeal, urging that the suit should have been tried under Section 30, Regulation II. 1819, that plaintiffs should have been nonsuited owing to the plaint not having been brought on paper of proper value, or at eighteen times value of the property: plaintiffs have not produced any document in support of their rights or of their (defendants') being plaintiffs' koorfa ryots, &c. &c.

The appeal was admitted on the 4th February 1850, and plaintiffs (respondents) having been served with notice, reply. They repeat what they stated in their plaint, and rely on Construction No. 1067, asserting that the disputed land forms a portion of their jummyec land, and that defendants are their "koorfa" ryots, &c. &c.

JUDGMENT.

The plaintiffs have clearly not come into court with clean hands, but have been mystifying the boundaries of the land regarding which they have brought this action; and but for the moonsiff's going in person to the spot, consequent on his having doubts in regard to the ameen's enquiries, this circumstance would not have come to light. Again, the disputed land is claimed by defendants as their own property; but plaintiffs have been unable to show by what title they make it out to be theirs. If it was lakhiraj, a sunnud or char would have been produced; if their jummyec land, then a pottali should have been tendered, and their right would have been supported by their talookdar. Further, plaintiffs demand rent from defendants as their "koorfa" or under-tenants, but in proof of it no kuboolcut or other document has been filed, nor has it been established satisfactorily that defendants during previous years ever paid any revenue to plaintiffs, on account of the disputed land, or rather for that which is the subject of this suit. In fine, Construction No. 1067 does not apply to plaintiffs; and as I do not consider plaintiffs have made good their case, I dismiss it, and decree the appeal, reversing the decision of the lower court. Costs throughout the courts to fall on plaintiffs (respondents.)

ZILLAH CHITTAGONG.

PRESENT: A. SCONCE, ESQ., OFFICIATING JUDGE.

THE 12TH. MARCH 1850.

No. 183 of 1849.

Appeal from the decision of Moulvée Mahomed Afzul, Moonsiff of Satkaneeah.

Mobaruk Alee, (Defendant,) Appellant,

versus

Mokeem Beebec and Morunn, (Plaintiff,) Respondent.

I MUST affirm the decree passed by the lower court in this matter, though not wholly for the reasons assigned by the moonsiff. The question at issue effected mainly the circumstances concerning the settlement of 3 cowrees, 7 gundahs of noabad land, which the plaintiff alleged the defendant had fraudulently acquired in collusion with her mookhtars. The plaintiff, it appeared from the proceedings of the settlement officers, had been called upon to appear, but failed to do so; and hence it came to be considered whether the settlement made with Mobaruk Alee and Kukur Alee, failing the attendance of the plaintiff, was a regular settlement. Overlooking this point, the moonsiff tried the question merely as regards the rights of the parties.

Now I find that the defendant (appellant) Mobaruk Alee, though in his answer he mainly relied on his right to the land, averring that the plaintiff's father had resigned in his father's favor all the interest which, as mouzzin, he ever held in the land, yet in the petition presented by himself and Kukur Alee for the settlement of the disputed land, they seek it only in consequence of the absence and apparent recusance of the parties who at the measurement were found in possession. Further, I find that the plaintiffs have adduced evidence to show that they deputed mookhtars to undertake the settlement for them, and have thrown much doubt on the good faith of the appellant. And lastly, seeing that the appellant relied in his appeal on an advertisement being served by the collector on the respondent, I called upon him to prove the issue of this process; but on this matter he has taken no steps.

Seeing that the mere form of settlement becomes no obstacle to the trial of the claim adduced, I agree with the moonsiff in his decision in favor of the plaintiff, resting chiefly on the inconsistency of the appellant's present plea with that which he was content to adduce when he sought a settlement from the revenue authorities.

The moonsiff's decree is affirmed, with costs.

THE 12TH MARCH 1850.

No. 255 of 1849.

Appeal from the decree of Moulvee Hadee Ali, Moonsiff of Rungunneeah, dated 21st March 1849.

Joy Singh, (Defendant,) Appellant,

versus

Mahomed Hanef, (Plaintiff,) Respondent.

IN this case the plaintiff sued to recover rupees 16, the value of 34 pairs of shoes, which the defendant by contract, on receiving an advance of rupees 8-8, undertook to deliver. In answer, the defendant pleaded that he had already repaid this sum of 16 rupees in lieu of the shoes; but his witnesses failing to support him, the moonsiff decreed the sum claimed.

Seeing that the plaintiff's witnesses spoke somewhat indefinitely as to the value of the shoes, I permitted the appellant to offer what proof he chose on that point; but he has done nothing, and accordingly I affirm the moonsiff's decree. In fact, the declaration of the defendant that he had paid 16 rupees in lieu of the shoes is a kind of admission that that sum is not overvalued.

THE 12TH MARCH 1850.

No. 132 of 1849.

Appeal from the decree of Moulvee Zeenutoollah, Moonsiff of Nowaparah, dated 8th February 1849.

Mohesh Chunder Rae and others, (Plaintiffs,) Appellants,

versus

Ramkaunt and others, (Defendants,) Respondents.

I HAVE only to consider in this appeal the operation of Section 2, Act XIX. of 1843, as regards a registered deed of sale passed by the appellants, and an unregistered deed of sale held by Ramkaunt defendant; the former being dated the 6th of Poos 1208, (1846 A. D.) and the latter 6th Kartick 1208.

The disputed subject of the suit is the fourth share of a tank (14 gundahs 3 cowrees) which both parties allege that one Ram-mohun sold to them on the dates specified.

So far as I understand the law, I have no alternative but to admit the appellant's claim. Clearly the authenticity of their kubalah is attested, and it was registered on the 26th June 1847. The moonsiff, believing that the first sale to Ramkaunt is also proved, thinks that the second sale must necessarily be a fraud. And so on the part of Rammohun there may have been fraud. But the law even contemplates such cases and directs that a registered deed shall invalidate an unregistered deed. Registry is the guarantee which is within the reach of every *bond fide* buyer.

The respondent Ramkaunt has adduced witnesses to show that in Phalagoon 1208 he re-dug the tank; but it is to be observed that the appellant's kubalah was written in the month of the preceding Poos; and moreover by appellant's witnesses it would appear that Ramkaunt, or his son, Arjoon, in whose name the share had been purchased, had notice from the appellant Mohesh Chunder not to dig. Upon the whole, I must decree the claim, with appellant's costs against Ramkaunt; only Rammohun shall pay his own costs.

THE 14TH MARCH 1850.

No. 257 of 1849.

Appeal from the decree of Moulree Mahomed Afzul, Moonsiff of Sathkaneah, dated 24th March 1849.

Tuzoonessa, (Defendant,) Appellant,

versus

Mahomed Reza, (Plaintiff,) Respondent.

IN this case plaintiff sued to recover d. 2-4-1 of land, constituting his under-tenure, of which he alleged that the defendant had illegally dispossessed him, and in answer defendant averred that the land held by the plaintiff amounted to d. 2-9-13-3, and that he had thrown it up voluntarily into her hands. Plaintiff proving his pleas, and the defendant giving no proof of her's, though repeatedly called upon, the moonsiff decreed the claim of the plaintiff.

In appeal, the appellant relies upon the untrustworthiness of the plaintiff's witnesses, and, in excuse for her own failure to produce evidence, she says her mookhtear had left the district. Upon these points I find no reason to disturb the decree of the lower court: but as it appears that the moonsiff not only restored the land to the plaintiff, but determined what jumma he should pay, a point which was not at issue, the objection of the appellant upon that matter is good. I therefore so far modify the decree of the lower court: and it will be understood that nothing more is ordered than to place the plaintiff (respondent) in possession of the land sued for. The costs of appeal will be divided between the parties.

THE 20TH MARCH 1850.

No. 7 of 1849.

Appeal from the decree of Moulvee Ashruff Alee, First Principal Sudder Ameen, dated 14th June 1849.

Chundee Churn and others, (Plaintiffs,) Appellants,

versus

Lal Mahomed, the Collector, and others, (Defendants,) Respondents.

THE plaintiffs (appellants) in this action sue to quash a settlement of d. 185-3-4-2 of noabad land, which was made originally with Buksh Alee and Mobaruk Alee in 1836, and re-affirmed in favor of Buksh Alee and Lal Mahomed in 1841; and to establish their own right to engage for this land.

The land, which forms the subject of the action, is situated in mouzah Poecherree, and is designated in the technical language of the district "hal noabad;" that is, noabad land which previous to the late survey and measurement of the district had not formed the subject of a revenue settlement. The plaintiffs averred, and it is not denied that they held by hereditary right the proprietary interest of all the other assessed lands in Poecherree, that is, of resumed lakhiraj land, and compromised lakhiraj, and of the older noabad land, including the noabad attached to the estate turruff Joynarain Ghosal, as well as the old noabad of which the zemindaree right is vested in the Government; and their claim to acquire the settlement of the hal noabad was rested on the plea that it had been already occupied, and was reclaimed and cultivated, by themselves or those whom they represent.

The answer of the principal defendants, and of the collector in support of them, embodies these points; that Mahomed Ashruff, father of Buksh Alee, had cleared and cultivated much of the disputed land; that the plaintiff expressly rejected the settlement; and that, above all, this noabad land being the zemindaree of Government, it lies within the right of Government to bestow the talook-daree settlement on whom it pleases.

The principal sudder ameen found that the plaintiffs' alleged rejection of the settlement was not proved; but he considered that the act of the revenue authorities, which allowed this disputed talook to the defendants while they gave up four muhals to the plaintiffs was not unreasonable; and that as regards prior occupancy, the plaintiffs had adduced no better evidence than the defendants: and he dismissed the suit.

Here however an obvious remark is that the plaintiffs stood upon their rights, not upon the favor of the settlement officers; if they had a good title to the settlement of hal noabad land, that title could not be annulled by their acquiring the settlement of any number of other muhals. Moreover, it appeared to me on going through the papers on appeal, that the point of possession

upon which the principal sudder ameen, from the evidence before him, could pronounce no definite judgment, ought to be susceptible of further elucidation, and with that view I required the parties to give further evidence upon that point: and eventually under Section 31, Regulation VII. of 1822, I required the collector to submit to me the settlement proceedings.

I agree with the principal sudder ameen that the claim now at issue cannot be affected by the supposed refusal of the plaintiffs to accept the settlement when tendered to them. Their refusal is not proved. It is hinted indeed that their written declaration to that purport has been surreptitiously made away with: but we had no evidence that it was written or of the terms in which it was written.

Indeed, so much was admitted by the commissioner and sudder board when the revision of the settlement of mouzah Poechurree came before him on the 3rd August 1841; and in the roobakaree recorded on that occasion it is allowed that, even in the paper which had been assumed to exhibit the plaintiffs' rejection of the settlement of the lands belonging to the turruff Jynarain Ghosal, the plaintiffs' refusal was conditional, not specific, as they declared their readiness to settle, on their objections being adjusted.

With regard to the contested occupancy and original reclamation of the land, I had expected that one party or the other would present me with evidence, calculated to show by whom the superior profitable interest in the 59 droons cultivated land of the disputed settlement had, before the measurement, been appropriated and enjoyed. I may or I may not have personally reason to believe that either side, and especially the plaintiff would have much difficulty in distinguishing the cultivation and rents of the disputed land, from those of the other land of the village with which it was intermingled. As it is, I am constrained to admit with the principal sudder ameen that the *vivâ voce* evidence, tendered by the appellants in this or in the lower court, is of no greater force than the evidence given by the respondents: on both sides the evidence is indefinite and insufficient. So far then, apart from the general presumption that the plaintiffs, who had indisputable possession of the zemindaree or talookdaree interest of all the other cultivated land of the village, had in the very nature of things enjoyed the talookdaree interest of the hal noabad land, I must have held that *direct* proof of this enjoyment had been given. But in the settlement proceedings I find evidence of a very different kind. In 1836, a great number of the under-tenants of the village were examined by the collector, and among others Buksh Aleo, with whom the hal noabad settlement was afterwards made. On the 13th April 1836, Buksh Aleo, being examined, was asked to describe what land of whatever kind he held in the village Poechurree; and he then unreservedly admitted that he and his father shared in five "itmams" for which they paid rents to the zemindars (these plaintiffs or their

predecessors,) and for which they had, from the zemindars, received pottahs. The admission of the other under-tenants was to the same purport: and, it is clear to me, I must infer that the interest of Buksh Alee or of his father, Mahomud Ashruff, was subordinate to the interest of the appellants. Mobaruk Alee (and afterwards Lal Mahomed) was only conjoined with Buksh Alee for the purpose of the settlement, not in recognition of any right which he had himself possessed.

I come now to consider whether the power of the settlement officers is absolute to confer the talookdar's settlement of this tal noabad upon whom they please. I have to look at the question both as it regards cultivated and as it regards uncultivated land. First, then, I would say that by a custom coeval with and beyond living memory, the party who, in this district, clears and cultivates, or, who directs the clearing and cultivating of noabad land, is universally admitted to stand towards the state in the relation of noabad talookdar: by his industry and supervision has waste land acquired a profitable surface; and in his favor, possession and appropriation have been permitted invariably to construct a prescriptive right of occupancy.

Not only does custom determine the possessive interest in noabad land, but this interest is with regard to such land inherent in the appropriation itself. Here is a question of 59 droons of cleared land, of more than three hundred and fifty acres. Be the party who he may, whose industry and authority effected this appropriation, it is obvious, in the mere statement of the large clearance which he has effected, that he does possess some sort of right which the Government as a zemindar of waste land is not at liberty to set aside, or to place on a par with that of any stranger of the antipodes. The right of Government to demand rent, and, far less, the amount of that rent, are not now at issue. It is strictly a question of tenant right; of the preference or no preference to be admitted in favor of those, whose meritorious labour has given occasion for the formation of a revenue settlement, and has furnished the means of enlarging the public rent-roll. The presumptuous traditions of an ancient nation converted the performance of filial duties into the concession of filial favors. The state as a noabad zemindar owes all to the industry of its tenants, and, enjoying the profits of that industry, it is not in a position to say that that industry has been misdirected, or that the right of possession which it claims should have been left in swamps or in forest, to have been predominated in by the sea or by wild beasts.

I must hold then that the appellants are entitled to the settlement of the droons 59-4-10-2 cultivated land, which was assessed as such in the settlement made with Buksh Alee and Lal Mahomed: with regard to that settlement, the appellants must be considered as the talookdars liable to pay the rent assessed on that land. But the case is different with regard to the remaining land, which at the time

of settlement was not cultivated. I find no reason to declare that the appellants have in any sense appropriated the waste land.

Costs of appellants will be charged to principal respondents, less in proportion to that item of the claim which I disallow. Government shall pay its own costs.

THE 20TH MARCH 1850.

No. 158 of 1847.

Appeal from the decree of Mr. Snell, Moonsiff of Deeang, dated 12th March 1847.

Mohun Lal Sookul, (Defendant,) Appellant,

versus

Ameer Mahomed, (Plaintiff,) Respondent.

ON the 14th Bhadroo 1195, Ameer Mahomed, the plaintiff in this action, received from Mohun Lal Sookul, the defendant, now appellant, a pottah for droon 1-7-2 of land situated within his estates of Sumboo Ram Canoongoe, at an annual rent of Sicca rupees 437-13-1, but, averring that he had acquired no more than krants 13-6-3 of land on account of Mohun Lal Sookul, 10 annas share of that estate, he sued to have his rent reduced to rupees 27-1-18, and to receive the excess rent which he had paid for the years 1195 to 1206.

In declaring his possession under the pottah to be only krants 13-6-3, on account of the appellant's share of the turruff, plaintiff stated that the land held by him for the 16 annas of the talook was droon 1-5-7; upon this he maintained that his rent should be calculated; but he admitted at the same time that the whole land in his possession amounted to droon 1-13-0-2, claiming the difference free of assessment under the designation of "khanabaree" and "puttahdaree" land, that is, as land set aside for the profit of himself as talookdar.

Thus the plaintiff's claim included two points; the amount of land held by him; and his right to have the jumma payable by him assessed not on the whole but on a part of that land.

The matter at issue was very inadequately enquired into by the lower court. The defendant pleaded not only that, the plaint not specifying the land which the plaintiff admitted his possession of, he could not give a definite answer, but also that the plaintiff held as much as three droons, which a local enquiry would establish. The moonsiff declined to hold a local enquiry, and assumed a decree which had been passed by a principal sudder ameen, on the 30th May 1844, in favor of Ameer Mahomed, to be evidence that the latter held only droon 1-13-2 of the turruff. In that older suit the plaintiff had sought to recover possession of portion of the talook which he had purchased: but on this occasion the defendant urged that the question at issue now could not be affected by the

investigation to which the first suit was restricted ; and while plaintiff expressly grounded his claim upon the alleged fact that he held less land than his pottah guaranteed to him, the defendant maintained that he held land in excess of that specified in the pottah. In fact, the attention of neither party had been adequately directed to the kind of evidence required from them : and I proceed to pass judgment in the case, taking into view all the steps that have been tediously taken while the case has been under appeal.

An ameen having been deputed to ascertain what land the plaintiff (respondent) under the disputed settlement was possessed of, showed in his returns that it amounted to droons 2-11-0-13-2. To this however the respondent objected : and he showed a detailed list of dags aggregating krant 13-18-3, which he declared did not form part of the talook referred to in this suit. Upon this point the ameen's proceedings were incomplete, and I had again to call upon the parties to give such evidence as they thought necessary to prove the manner in which this disputed portion of krant 13-18-3 was occupied.

My conclusion upon the whole is that the plaintiff (respondent) has not proved his case, has not proved that he holds less land than what his pottah conveyed to him. He admitted that out of the ameen's aggregate of 2-11-13-2, he held 1-13-2-0-2 ; and with respect to a large portion of the remainder he has given no evidence at all, while the appellant has adduced evidence to show that the respondent draws the rents of krants 3-15-1, on account of dags 146, 147, 174, 179, 325, and 340 in mouzah Talgawn, and of krants 3-3, on account of dags 230, 236, and 237 in Toolatullee : these two items alone will raise the respondent's occupancy up to 2-3-18-2, altogether irrespective of other land, which both sides have attempted to prove the disposition of according to their respective pleas.

The dispute is much complicated by the circumstance that the respondent has possession of a share in another talook under the same zemindar : so it is his purpose to assert that some land which appellant declares belongs to talook Ameer Mahomed (now in dispute) is attached in part to the second talook Ameer Mahomed Magun Alee : thus, for instance, a dag 290, comprising krants 2-7 of land, is said by the respondent's witnesses to belong to the latter talook, while the appellants say that it forms part of the talook now sued for. Be that as it may, while the respondent (plaintiff) is thus in a position to shift from one muhal to another, it was the more incumbent on him to draw up his plaint in a form which should give the defendant distinct notice of the question which he had raised. As the case has gone, I do not say that this indistinctness is a ground of nonsuit : but it is of material consideration when I come to weigh the value of the insufficient or conflicting evidence before me.

The conditions of the pottah as regards the right of either party to revise the engagement, are clear: it provides that if, on a measurement, the land should be found to exceed that specified in the pottah, the rent should be revised; if less, the rent should be lowered.

The total land of the pottah is droon 1-7-7-2: and it is recited that the talookdar, holding, of this land, the khanabaree pottahdaree, cultivated and waste, should pay the rent specified. There is no doubt that a good many years ago the items of khanabaree and pottahdaree were expressed in the settlement engagements of landlords and tenants: but here there is no specification: the total land leased is given as 1-7-7-2, and the writing runs that, not over and above this land, but out of this land, the lessee should enjoy what the possession of it enabled him to retain. Ameer Mahomed has filed an old pottah of a year not easily to be deciphered, with the view of showing on what terms the original talook, from which the chief part of talook Ameer Mahomed was derived, was granted: now to say nothing of the marks of fabrication on the face of it, I will only remark that the gross amount of land rented, as well as the net quantity, and also the deductions of khanabaree and pottahdaree are specially recorded.

I find then that the plaintiff's (respondent's) pottah assigned to him droon 1-7-7-2, and no more: that including the share belonging to the co-proprietor of Mohun Lal Sookul, the whole land of the talook amounted to droons 2-5-2, and that now the respondent has not proved that he holds less than droons 2-0-5-2: on the contrary, as already stated, from the evidence adduced by the appellant it is to be inferred that the talookdar holds at least droons 2-3-18-2. I must so decree: the moonsiff's decree is reversed, and the suit dismissed. The costs of appellant must be borne by respondent.

THE 30TH MARCH 1850.

No. 1 of 1847.

Appeal from the decree of Moulvee Ashruff Alee, Principal Sudder Ameen, dated 11th December 1846,

Ameer Mahomed Buhurdar, (Defendant,) Appellant,

versus

Mohun Lall Sookul, (Plaintiff,) Respondent.

Two days ago I decided a case between these parties in which this appellant as plaintiff had sued to have his rent as settled by pottah reduced: on the other hand, in this suit, the plaintiff Mohun Lal Sookul sued to recover rent due at the original jumma. The period embraced in Mohun Lal's suit is for the years 1195 to 1206, during which he allows that he received Sicca rupees 59 and Company's rupees 244-15-16; in all about Company's rupees 307-14;

while Ameer Mahomed states that for the same period he had paid rupees 365-6-14. The talookdar, Ameer Mahomed, has failed to prove the payment of more than the zemindar allows for; in fact, he files receipts for only rupees 281-15-3. Under these circumstances, I must uphold the decree of the lower court: the appeal is accordingly dismissed; the costs of court will be charged to appellant.

ZILLAH CUTTACK.

PRESENT: M. S. GILMORE, ESQ., JUDGE.

THE 5TH MARCH 1850.

No. 20 of 1849.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 8th November 1849.

Hurry Bullub Das and Gooroo Pershad Das, (Plaintiffs,) Appellants,

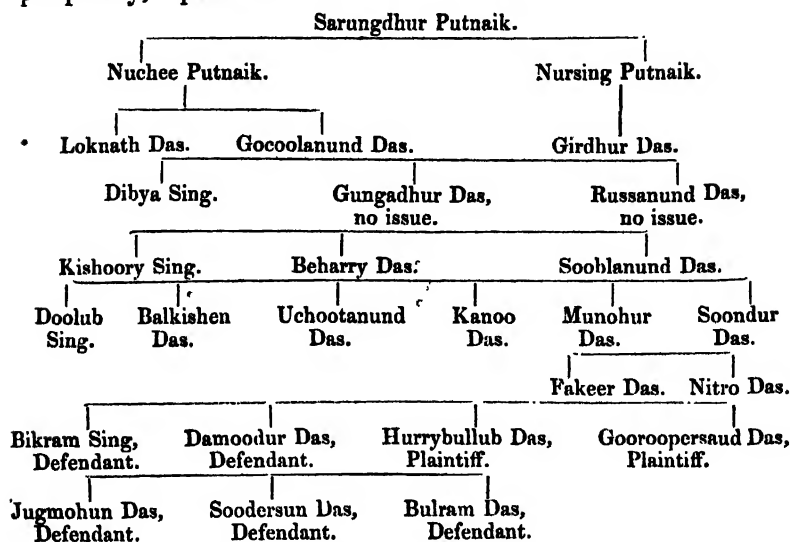
versus

Ram Mahapatur, Bikram Singh Bidyadhur Mahapatur, Jugmohun Das, Soodersun Das, and Bulram Das, also Soodersun Das, auction purchaser, (Defendants,) Respondents.

CLAIM, possession of a 10 annas, 11 gundahs, 1 cowree, 13 krants share of the estate killah Amohatta, and the cancelment of the principal sudder ameen's order of the 25th August 1847, directing the sale of the rights and interests of Bikram Singh Bidyadhur Mahapatur, in execution of a decree obtained against him by Ram Mahapatur. Suit laid at rupees 1,453-6-4-3, the amount of the sudder jumma.

The plaintiffs stated that Sarungdur Putnaik, the common ancestor of themselves and the defendants, with the exception of Ram Mahapatur and Soodersun Das, held the office of bewurtah of tuppa Poorsindo, and got mouzah Tikree, &c. for his *jagyr*, and died leaving two sons, Nuchee Putnaik and Nursing Putnaik, who amassed considerable wealth and purchased three estates, viz., Malteerah, and killah Amohatta, in pergunnah Sosso, and tuppa Maleeunch, in pergunnah Bunchas; that Nuchee Putnaik having died, Nursing Putnaik, to prevent future disputes, before his own death respectively allotted Malteerah and Tuppa Maleeunch to Loknath Das and Gocoolanund Das, the sons of his deceased brothers, and killah Amohatta to his own son, Girdhur Das Bidyadhur Mahapatur, and that on Nursing Putnaik's death the other branches of the family, a genealogical table of whom (so far as can be ascer-

tained from the records of the case) is here given for the sake of perspicuity, separated :



That in 1190 U. Kishorhy Das, with the aid of Government, got possession of the property in dispute, and died in 1194, at which time a great part of the property was out of cultivation, and it was farmed by Government to one Guneshram Singh till 1204; that Doolub Singh next got possession, and in 1210 died leaving it in the joint possession of his four sons, though Bikram Singh Bidyadhur Mahapatur, the eldest, was alone recorded as proprietor in the Government serishtah, and that to raise money they all jointly sold a 4 annas share of it to the wife of Damoodur Das, one of the shareholders, and that the share in question was recorded in the name of Damoodur Das along with that of Bikram Singh. That Bikram Singh, out of the other 12 annas, sold 3 annas 5 gundahs without their consent to Hurry Surrin Das, granted a twenty-eight years' lease of the remaining 8 annas 15 gundahs to Ram Mahapatur; and that although they filed a petition of objection when Hurry Surrin Das applied for the dakhil kharij of the portion purchased by him, and Hurry Surrin Das was referred to the civil court to establish his claim, he, in collusion with Bikram Singh, who acknowledged judgment, obtained a decree. And since out of the 12 annas share which had been settled as a separate estate, 3 annas belonged to Bikram Singh, 3 annas to Jugmohun Das and his brothers, and the other 6 annas to the plaintiffs, and Hurry Surrin Singh had purchased 3 annas 5 gundahs from Bikram Singh, who no longer possessed any right to the property, though it was recorded in his name in the Government serishtah, they prayed that their 6 annas, which, according to the arrangement by which the 12 annas had

been converted into an independent estate, had become a 10 annas, 11 gundahs, 1 cowree, 13 krants share, might be released from attachment, and recorded in their names in the collectorate; and that the order of the principal sudder ameen of the 25th August 1847, directing its attachment in execution of a decree obtained by Ram Mahapatur against Bikram Singh, might be cancelled. And in a supplementary plaint, they petitioned that Soodersun Das, the purchaser at the sale held in execution of the said decree, might be included among the defendants.

Ram Mahapatur stated, in answer, that the plaintiffs' claim was altogether groundless, that the disputed property was not acquired by Nuchee Putnaik and Nursing Putnaik, and that the plaintiffs never were in possession; but that according to the custom of Bikram Singh's family, the estates always descended to the eldest son alone, who was distinguished with the title of Bidyadhur Mahapatur, and that the other members lived with the eldest son, and merely received maintenance from the property; and that Girdhur Das Bidyadhur Mahapatur acquired the estate during the Mogul dynasty, from whom it descended to his eldest son Debya Singh, and again from him to his eldest son Kishoree Das, (who had five sons instead of three as stated by the plaintiffs,) and so on; and that some of the members of the family, viz. Damoodur Das, Hurrybullub Das, and Rugoonath, got portions of different mouzahs for their support, the rent of which they paid to Bikram Singh. That on the 4th July 1808, Bikram Singh sold 4 annas of the estate to Damoodur Das, of which he re-purchased mouzah Pooparry, and on the 16th July 1837 sold a 3 annas 5 gundahs share of the remaining 12 annas to his (defendant's) father, Hurry Surrin Das, and, on the 25th December following, mortgaged the other 8 annas 15 gundahs to him for 28 years, or from 1245 to 1272 U., and executed a rahun kubalah, which was witnessed by the plaintiffs and other persons. Also that his father Hurry Surrin Das got possession of the 3 annas 5 gundahs purchased by him through a decree of court, and that he likewise instituted a suit No. 14630, for the recovery of the amount of the mortgage bond with interest, which was decreed in his favor on the 28th August 1840; and that the estate, when it was settled under Regulation VII, 1822, was recorded in the names of Bikram Singh, Hurry Surrin Das, and Jugmohun Das, the son of Damoodur Das. He also stated that he had sued out execution on account of the first three kists of the instalment bond executed when the decree above alluded to was passed; and now that he caused a 10 annas share of the property to be attached on account of the 4th, 5th, and 6th kists, the plaintiffs and Jugmohun Das, in collusion with Bikram Singh, laid claim to a share in the property, though it was indivisible, and had for seven generations descended to the eldest son; and had it been otherwise, when Jugmohun Das instituted suit No. 14435, in the court of the sudder ameen at Bala-

sore, claiming a 3 annas share of the property, he would not, on Bikram Singh's making over to him mouzahs Oodyepore and Ru-teena, and ten *mauns* in mouzah Ginguttee, for which he has to pay the annual rent of rupees 20, have filed a *ladavee* petition; and the plaintiffs would not only have been recorded as joint proprietors with Bikram Singh, in the settlement papers, but their consent would have been procured to the sale of the 4 annas of the estate which was sold by Bikram Singh, to the wife of Damoodur Das, and likewise to the deed of sale and mortgage respectively executed by him in favor of the defendant and his father.

Bikram Singh Bidyadhur Mahapatur admitted that the plaintiffs' claim was correct, and stated that, although they had caused the estate to be recorded in his name, as they now wished to hold their shares separate, he had no objection to their doing so.

The plaintiffs, in reply to Ram Mahapatur, stated that Doolub Singh Bidyadhur Mahapatur had six sons, two of whom died, and of the others the three youngest each got a village in lieu of their share, and relinquished all further claim to the property in favor of their eldest brother, and although Jugmohun Das, in getting possession of mouzah Oodyepore, &c., compromised the suit instituted by him against Bikram Singh, his having done so could not prejudice their claim.

The principal sudder ameen held it to be established that the property was not divisible, and that it had always descended to the eldest son, the other members of the family receiving definite small allotments of land for their maintenance, on their separation from the head of the family; and Bikram Singh's having filed an *ikrarry juwab* when the case was on the point of being decided, only showed that he had colluded with the plaintiffs to defraud Ram Mahapatur, as, in the suit instituted in the court of sudder ameen at Balasore, he stated that the property was not divisible; and he accordingly dismissed the plaintiffs' claim.

In appeal, the plaintiffs maintained that there existed no reason why the estate should not be divided, but they did not attempt to show that it ever had been divided among the members of their family.

JUDGMENT.

As the appellants have not only entirely failed to show that the property in dispute is divisible, or that it ever was divided among the heirs of Nursing Putnaik, the common ancestor of themselves and the defendants; but on the contrary it appears from their own showing, that notwithstanding Bikram Singh Bidyadhur Mahapatur sold a 3 annas 5 gundahs share in the property (which they alleged to be the extent of his share) to Hurry Surrun Das, the remaining 8 annas 15 gundahs share was settled solely in his name, without any opposition being offered on the part of the plaintiffs or any of the other members of the family,—I see no reason for differ-

ing from the opinion recorded by the principal sudder ameen to the effect that the property is not divisible, and I therefore affirm his decision, and dismiss the appeal, without serving notice on the respondents.

THE 6TH MARCH 1850.

Appeals from the decision of Turrakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 13th November 1849.

Case No. 21 of 1849.

Bhugwan Putnaik, Zemindar, (Defendant,) Appellant,

versus

Nubeen Mahapatur, (Plaintiff,) Respondent.

Appeal Case No. 22 of 1849.

Gocoolanund Mhaintee, Ijaradar, (Defendant,) Appellant,

versus

Nubeen Mahapatur, (Plaintiff,) Respondent.

CLAIM, possession of a 4 annas share of moquddummee mouzah Bayharpore Dhunardhun, pergunnah Balooobissee, with wasilaut, and the cancelment of a farming lease for the same, dated 5th Jeit 1253 U. Suit laid at Company's rupees 1,512-14-7. Instituted 24th August 1848.

The plaintiff stated that, in execution of a decree, No. 14838, held by him for the sum of rupees 1,959-10, the rights and interests of Baikanth Mhaintee in moquddummee mouzah Bayharpore Dhunardhun and surburakarry mouzah Meerzapore were advertised for sale, when Bowun Mhaintee and others, defendants, filed a petition of objection claiming the property as theirs, which was rejected by the former principal sudder ameen; and that Baikanth Mhaintee and the said mozahims engaged to pay him rupees 59-2 within a month's time, and executed an instalment bond agreeing to pay the remaining rupees 1,900 in the course of ten years at the rate of rupees 190 annually with interest, at the same time mortgaging the above properties as security for the fulfilment of their engagement, and, on the 15th March 1843, filed a petition in court intimating that the said arrangement had taken place with his (the plaintiff's) consent; that on the 30th May 1845, he caused a 4 annas share in each of the said mouzahs to be sold, in consequence of the defendants having failed to pay the instalments, which were purchased by Madhub Rai, and that other 4 annas shares in each mouzah were sold on the 15th July of the same year in execution of a decree No. 143, held by Chunder Seekur Mhaintee and others; and on the 1st February 1847, he caused the remaining 8 annas share of mouzah Bayharpore Dhunardhun, which includes the property in dispute, to be sold for other instalments which had interme-

diately become due to him, and purchased it himself for the sum of rupees 1,300, whereon he filed his receipt for the amount in court, and got possession, and collected a portion of the rents of certain ryuts; and that on his applying to have his name registered as the proprietor of the 8 annas share purchased by him, the canoongoe of the pergunnah reported that Gocoolanund Mhaintee, the nephew of the defendants, was in possession of the property on a lease granted to him by the defendants from 1254 U., and deputy collector Rampersaud Rai dismissed his application, but, on his appealing to the collector, the decision of the lower court was reversed and his name was recorded as the proprietor; and Bhugwan Putnaik, the zemindar in whose estate the under tenure is situated, sued him and the purchasers of the other 8 annas kishtut for arrears of rent, and, having obtained a decree, caused a 4 annas share of his 8 annas to be sold in execution thereof; and when he sued certain of the ryuts for the rent due from the remaining 4 annas, Gocoolanund Mhaintee filed a mozahim, stating that he held a lease of one half of the mouzah, but Mr. deputy collector Mactier pronounced the lease to be a fabrication and decreed his claim, and then the ryuts, at the instigation of the zemindar, the former moquddums, and the said Gocoolanund Mhaintee, appealed to the commissioner who cancelled the deputy collector's decision, and directed him to refer the parties in the case to the civil court, as the fact of possession was disputed, and in consequence thereof the present suit was instituted. He also stated that, if Gocoolanund Mhaintee had obtained a lease of the property before it was purchased by him, he would have represented the fact at the time of the sale, or when the dakhil kharij case was pending; and the ryuts, instead of stating that they had paid the rents of 1254, to the former moquddums, when he demanded it from them, would have said that they had paid it to the ijaradar; and the ijaradar should have paid rent to him, the plaintiff, or, if he would not have accepted it, to the zemindar, or have deposited it in the collectorate when the zemindar caused the 4 annas to be advertised for sale on account of the arrears and have saved it from sale; and not having done so, it was clear that the zemindar and the former moquddums to defraud him had prepared the ijara pottah in favor of Gocoolanund Mhaintee, and inserted his name in the putwarry papers, &c.

Bhugwan Putnaik, zemindar, denied his liability on account of the plaintiff's claim, as he neither granted the lease to Gocoolanund Mhaintee, nor, in collusion with the former moquddums, dispossessed him; and he stated that as the property in dispute formed part of his talook Surulpore, it was his province to collect the rents from the moquddums and pay the same to Government; and the plaintiff, after purchasing the 8 annas share of the moquddumnee, having failed to pay his rent he sued him and the other moquddums, and having obtained a summary decree against them, he caused the

whole of the mouzah to be brought into the lotbundee, but the collector only sold a 4 annas belonging to each defaulter, and, hearing after the sale had taken place, that Gocoolanund Mhaintee was ijaradar, he recorded his name as such in the putwarry papers for 1254 U.

Bowun Mhaintee and Muddoo Soedun Mhaintee, the former moquddums, merely stated that the plaintiff's claim against them was inadmissible as they had granted the lease to Gocoolanund Mhaintee, when they were in possession of the mouzah.

Gocoolanund Mhaintee, ijaradar, stated that Bowun Mhaintee and others, the former moquddums, granted him a lease for 21 years on the 5th Jeit 1253 U., and the plaintiff to dispossess him had instituted the present suit; and, that he was in possession and that the plaintiff was not, was evident from the canoongoe's report. He likewise stated that he filed no mozahim in the dakhil kharij suit, because he possessed no proprietary title either as zemindar or moquddum in the mouzah, but was merely farmer; and that as the plaintiff had purchased the rights of the former moquddums, he was entitled to rent from him, but he had no power to dispossess him during the term of his lease.

Jugdes Mhaintee and Parbutty Dey, the son and widow of Baikaunt Mhaintee, stated that they had nothing to do with the granting of the lease to Gocoolanund Mhaintee; and Gopal Mhaintee pleaded that his share had been sold in execution of the decree held by Chunder Seekur Mhaintee and others, prior to the purchase of the disputed property on the part of the plaintiff, and therefore that neither of them could be held responsible for his claim.

The principal sudder ameen held that neither the *ijara pottah*, nor the evidence adduced in support of it could be relied on, for, had it been a genuine document, Gocoolanund Mhaintee would have filed a mozahim when the property was sold in execution of the plaintiff's decree, and purchased by him on the 1st February 1847; and whereas Baikaunt Mhaintee and the other moquddums had mortgaged the property in dispute together with the rest of the mouzah to the plaintiff, and they were restricted by the terms of the deed of mortgage from alienating or disposing of it, their granting a 21 years' lease of it was tantamount to selling the property, and consequently the lease could not be upheld. And as Gocoolanund Mhaintee was related to the former moquddums, and the lease was at first engrossed on a two rupees' stamp, there was great reason to suspect that it was a forgery, and that it was thus written, because no stamp of the value of four rupees of a date prior to the purchase by the plaintiff could be procured. He also held that the collusion of Bhugwan Naik, with the former moquddums and the alleged ijaradar, was manifest from the circumstances of his having recorded the name of Gocoolanund Mhaintee as ijaradar in his putwarry accounts, after he had sued the plaintiff for rent and obtained a

decree against him, and had omitted to sue Gocoolanund as dukhulkar; and he accordingly decreed a 4 annas share of mouzah Bayharpore Dhunardhun as the property of plaintiff, and directed that his costs, as revised in his fysillah, be paid conjointly by all the defendants except Gopal Mhaintee.

Against the above decision, Bhugwan Mhaintee and Gocoolanund Mhaintee preferred two separate appeals, the one pleading exemption from liability for the plaintiff's claim, on the grounds of having taken no part in dispossessing him, and the other asserting his right to possession, on the grounds of the ijara pottah; and as both appeals have arisen out of the same judgment, they have been tried together.

JUDGMENT.

It appears that not only was the stamp paper on which the ijara pottah was written purchased in the name of Bustum Saontra, who lives at a long distance from the defendants, but it was only one half of the value required for the document, on which account, and likewise from the general circumstances of the case, I feel fully convinced that it was written at or about the time the plaintiff purchased the property, with the view to defraud him and obstruct his possession. But whether such was the case or not, as the defendants Baikaunt Mhaintee and others, the former moquddums, had mortgaged the property, and pledged themselves in no way to alienate it, long prior to the alleged ijara, as signified in their petition to the court, dated 15th March 1843, the ijara cannot stand in the way of the plaintiff's possession. And as Bhugwan Putnaik, the zemindar, after suing the plaintiff as the party in possession for the rent of 1254 U., and causing 4 annas of the property purchased by him to be sold in execution of the summary decree obtained against him, recorded Gocoolanund Mhaintee as ijaradar in his putwarry papers for 1254 and 1255, filed in the canoongoe's serishtah, it was incumbent on the plaintiff to include him as defendant in the suit, and he is liable for the consequences. And although he has pleaded that he did so in conformity with the commissioner's order, and because the magistrate had declared Gocoolanund Mhaintee to be the party in possession, under Act IV., 1840, the commissioner recorded no opinion whatever as to whether Gocoolanund Mhaintee was ijaradar or not, and the Act IV. case was pending in appeal when the papers were filed. I therefore see no reason for interfering with the decision of the principal sudder ameen, which is hereby affirmed, and the appeals of both appellants dismissed without serving notice on the respondent. Copy of this decision will be filed in each case.

THE 15TH MARCH 1850.

No. 1 of 1850.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 21st December 1849.

Choitun Prodhun, (Plaintiff,) Appellant,

versus

Muddoo Mhaintee and Radhakaunth Das, (Defendants,) Respondents.

CLAIM, rupees 1,428-5-4, principal and interest of a rahan tumusook, dated 5th Bhadoon 1151 U. Instituted 11th March 1848.

The plaintiff stated that, in the month of Jeit 1251, his father, Moorley Prodhan, advanced to the defendant Muddoo Mhaintee, on account of the costs of a suit instituted by him against one Lukmee Dey, and for his own private expenses, the sum of rupees 350, for which the defendant executed a bond, and that on the 5th Bhadoon of the same year he lent him the further sum of rupees 639-8 to pay his creditors, and he executed the bond under which he sued for the sum of rupees 1,000, being the amount of the two loans, inclusive of rupees 10-8 interest on the first, and further pledged the decree he had obtained against Lukmee Dey as security for the repayment of the amount. And as his father had died in Kartick 1254 U., and he, the plaintiff, had repeatedly demanded payment without success, he instituted the present suit for its recovery. And in a supplementary plaint, filed 23rd May 1849, he represented that Muddoo Mhaintee had sold 8 annas of the decree above alluded to, to Radhakaunth Das, who had caused mouzah^s Gopalpore, mortgaged for the amount thereof, to be sold in execution, and prayed that he might be made defendant in the suit.

Muddoo Mhaintee entirely repudiated the claim, and stated that he possessed estates and large funds of his own, and neither had necessity to borrow nor was indebted to any person, but that many persons owed him money, and that in June 1844 he had sued Lukmee Dey, the person alluded to in the plaint, and obtained a decree against her; but that the total expenses of the suit only amounted to rupees 74-4, and that was not paid all at once, but at different times, and therefore there could exist no necessity for his borrowing rupees 350 from the plaintiff to carry on the suit; and he did not visit Cuttack, which is 20 cos distant from his place of residence, during the time it was pending; and had he come, his expenses would not have amounted to more than rupees 4 or 5 per mensem. He further stated that the plaintiff had been instigated to prefer the suit against him by Bunmallee Mhaintee, who was joint proprietor with him, the defendant, of moquddumme mouzahs Ramchunderpore and Begooniah, and with whom he was continually quarrelling; the said Bunmallee having purchased mouzah Gopalpore when put up for sale in execution of a decree held by one Brujoo Sahoo, and

to prevent the property being resold on account of his (defendant's) decree, fraudulently caused the kubalah filed by the plaintiff to be written on an old stamp paper, in the name of his father, Moorley Prodhan, to escape himself being prosecuted for forgery. He also observed that, if the plaintiff's claim had been a just one, he would have filed a petition of objection when he, the defendant, brought mōuzah Gopalpore into the *lotbundee* ten months after the date of the bond alleged to have been executed by him, and from his not having done so, it was to be inferred that the tumusook was not then written. And he added that at the time he was alleged to have executed the tumusook at Cuttack, he was engaged at a great distance off in arbitrating a family dispute between certain other parties.

Radhakaunth Das also stated that the plaintiff's claim was false, and that, at the time the tumusook was alleged to have been written, Muddoo Mhaintee was engaged in adjusting a family dispute in pergunnah Bunchas, and that Coolmoney Raotra had on the 5th Bhadoon 1251, the date of the tumusook filed by the plaintiff, executed a similar document in favor of Muddoo Mhaintee in the presence of the canoongoe of the said pergunnah, who had attested it with his seal. And he objected that the witnesses to the tumusook alleged to have been executed by Muddoo Mhaintee, lived 17 and 20 cos from Cuttack, and the plaintiff did not present any petition stating that the decree obtained by Muddoo Mhaintee against Lukmee Dey had been pledged to him, before he, the defendant, purchased an 8 annas share, &c.

The principal sudder ameen observed that although six witnesses had deposed in favor of the plaintiff's claim their evidence was not to be relied on, because Moorley Prodhan's house was distant 16 cos from Cuttack, and he had no trading transactions at that place that he should take money there; and not only did the witnesses also live at a great distance from Cuttack, but the plaintiff and defendant Muddoo Mhaintee lived near one another in the mofussil; and although the defendant, Muddoo Mhaintee, sued out execution of his decree on the 24th August 1844, and published notice of sale for the 25th June 1845, neither the plaintiff nor his father presented any petition up to the latter date, stating that the decree had been pledged to them; and the stamp paper on which the document filed by the plaintiff was engrossed, was purchased three months before it was written, by a person who was no party to the document, at a distance from Cuttack; whereas if, as stated, the tumusook had been executed at Cuttack, the stamp would have been also purchased there; and it had been proved by the defendant's witnesses that he was not in Cuttack on the date on which it was written; and he accordingly dismissed the plaintiff's claim, with costs.

In appeal, the plaintiff argued that his claim was a just one, and that the *alibi* pleaded by Muddoo Mhaintee, and the execution of the tumusook in his favor, on the part of Coolmoney Raotra, as alleged by Radhakaunth Das, was false.

JUDGMENT.

Although it is not satisfactorily shown where Muddoo Mhaintee was on the date on which the *tumusook* is alleged to have been written, and I entirely discredit the execution of the *tumusook* on the part of Coolmoney Raothra in his favor on the date stated, in consequence of Muddoo Mhaintee's having made no mention of it in his answer, I can place no reliance on the plaintiff's statement, for as both the plaintiff's father and the defendant lived 20 cos from Cuttack, and neither of them carried on any trade there, it is not probable that the former would bring with him the large sum of rupees 639 to Cuttack at one time; and none of the witnesses to the *tumusook* are residents of Cuttack, but are all said to have come from different villages, upwards of thirty miles distant from it. And if the plaintiff really advanced the money to Muddoo Mhaintee, on the security of the decree obtained by him against Lukmee Dey, he would doubtless have taken delivery of the decree before he paid the money, as it was in every way susceptible of transfer, and he would have held possession of it until the money was repaid. Moreover, as the money was to have been repaid in four months, the plaintiff's father, who did not die until three years after the *tumusook* is alleged to have been executed, would have sued Muddoo Mhaintee for the recovery of the money. Therefore, not being satisfied that the defendant executed the document, I see no reason for interfering with the principal sudder ameen's decision, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondent.

THE 18TH MARCH 1850.

No. 14 of 1849.

Appeal from the decision of Tarrahaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 22nd December 1848.

Hoorsee Swain and others, (Plaintiffs,) Appellants,

versus

Rajnaraïn Chowdree, Rugoonath Chowdree, Kasseenath Das Chowdree, and Musst. Koontilla Dey, (Defendants,) Respondents.

CLAIM, possession of mouzah Aiba, situated in talook Bulbudderpore, pergunnah Teekun, as *mouroonsee moquddums*, in cancelment of the orders of the revenue authorities annexing it to the *hustabood* portion of the said estate, with wasilaut and interest. Suit laid at rupees 3,410-9-8.

This case was remanded by my order, under date the 14th December last, to the principal sudder ameen, with instructions to nonsuit the plaintiffs, because I was of opinion that Government, in conformity with whose or its officer's orders they had been dispossessed from their moquaddunee village, should have been made a party

to the suit; but it having afterwards been pointed out by the appellants, that according to Clause 2, Section 23, Regulation VII., 1822, such a mode of proceeding was unnecessary, the authority of the Sudder Dewanny Adawlut was obtained for a review of judgment in conformity with Section 4, Regulation XXVI., 1814.

The particulars of the case and the reasons of the principal sudder ameen for dismissing the appellants' claim, though he was of opinion that they formerly possessed an hereditary moquddum-mee title to the mouzah in dispute, viz., because they had executed certain kubooleuts as *moostajir* and *surburakars*, while the property was under khas management, will be found on referring to the Zillah Reports for December; and it is therefore unnecessary to recapitulate them in this place.

JUDGMENT.

Since it is admitted by the lower court that the appellants formerly possessed an hereditary moquddum-mee title to mouzah Aiba, and whereas the defendants have not denied they were in possession, the fact of their having held the mouzah as moquddums for a period exceeding one hundred years, is clearly established by the following documents filed with the settlement *nuthee*, viz., copies of two roobookarees of the deputy collector, dated 23rd March and 21st May 1843, the one confirming as *lakhiraj bilmutter* 1 beegah of land granted by Ramchunder Swain and Punchoo Swain, moquddums, under a sunnud, bearing date 1st Shahr Mohurrum 1208 U., and the other confirming 8 beegahs of land granted by Rajut Swain, moquddum, as *umrut minohee*, under two separate sunnuds, dated 15th Shahr Mohurrum 1154 and 30th Shahr Rajub 1160 U., all from the ruqba of mouzah Aiba; also copy of a sunnud for 1 batty, 3 mauns, 14 ghoots, 8 biswas of land granted for the same purpose by the said Rajub Swain on the 5th Shahr Ramzan 1165 U., and a perwannah issued by the Mahratta hakins, under date 9th Shahr Mohurrum 1198 U., to the wahdadars and zumeendars of pergunnah Teekun Bissoee, directing them on the application of Ramchunder Swain to strike off mouzah Aiba (represented in the said document as having been for a great length of time the moquddum-mee of the said Ramchunder Swain) as a *shikmee* or under-tenure of the zemeendarry of Hurry Bundoo Chowdry, and to collect the revenue of it direct from the moquddums; as well as from the copy of Gopal Pundit's accounts for 1211 U., exhibiting the names of estates in the province of Cuttack with the names of their proprietors, in which mouzah Aiba is recorded as the moquddum-mee of Ramchunder Swain; the simple fact of the appellants having executed kubooleuts as *moostajirs* and *surburakars* in 1835, 1836, and 1839, or signed other papers as such, during the time the mouzah was under the khas management of Government, cannot be allowed in any way to prejudice their title as moquddums, more especially as it appears from the collector's roobakaree of the 2nd January 1830,

that on the moquddums objecting to execute kubooleuts as moos-tajirs and surburakars, they were told that their titles as moqud-dums, which should hereafter be enquired into, would not be affect-ed thereby. It is, therefore, ordered, that the appeal be decreed, and the decision of the principal sudder ameen be reversed, and that copy of this decision be transmitted to the revenue authorities, with instructions to record the names of the appellants in the col-lectory records as moquddums of mouzah Aiba; and that the rat-able expenses of the appellants in both courts, *i. e.*, the stamp fees due to Government, (the appellants having sued as paupers,) with wasilaut from this date, be paid, with interest to date of realization, by the respondents; but as malikana on moquddummec tenures is only allowed to cover the expense and risk attending the collection of the rents from the ryuts, and the appellants were ousted by order of the revenue authorities, I do not consider them entitled to wasilaut during the period of their dispossession.

THE 18TH MARCH 1850.

No. 2 of 1850.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 26th December 1849.

Hurry Raot, (Plaintiff,) Appellant,

versus

Sheikh Russool Buksh, (Defendant,) Respondent.

CLAIM, rupees 1,812-3-11-3, principal and interest of a rahan tumusook, dated 33rd Unk 17th Poos 1251 U.

The plaintiff stated that, on the date in question, the defendant borrowed from him, through his (the plaintiff's) son, the sum of rupees 1,101, and mortgaged his zemindarry Juggurnathpore, the profits of which were to be appropriated in liquidation of the loan, but the defendant and his servants dispossessed him before he had recovered any of the money, and he has in consequence brought the present action against him, as he was about to dispose of the prop-erty to another party.

The defendant stated that a great portion of the amount claimed was on account of illegal interest on other transactions between him and the plaintiff; and that he had only borrowed on the occasion in question, the sum of rupees 500, and out of that sum he had only received rupees 379, for though the plaintiff promised to give him the remaining rupees 121, he had never done so, and his claim should, in consequence, be dismissed.

The investigation of the case then proceeded as usual, but when the evidence of the plaintiff's witnesses was being recorded, his vakeel represented to the court that, if the defendant would make oath that he had not borrowed, or that he had repaid the amount

of the bond, he would abide by the result; and the defendant having, on the application of the plaintiff's vakeel, made oath that he only received a portion of the money, which the plaintiff had realized from the profits of the estate, the principal sudder ameen dismissed his claim.

In appeal, the plaintiff urged that his vakeel had, in collusion with the defendant, caused his case to be dismissed, as he had given him no authority to put the defendant on his oath and abide the result.

JUDGMENT.

As the appellant's vakeel, Meerza Mahomed Alli, represented to the principal sudder ameen that, if the defendant would make oath that he had not received the amount of the tumusook, or that he repaid the same, he would abide the result, and the principal sudder ameen dismissed the suit on the defendant's making oath that he had only actually received rupees 379 of the said amount, and that the plaintiff had realized the whole of it from the collections of talook Juggernauthpore; and it has not only been ruled by the Sudder Court, in the cases of Bajpie Rajah Gunesh Chunder *versus* Surroop Chunder Sircar, under date 29th August 1843, and Gour Mohun Gosain and others *versus* Hullodhur Ghose and others, under date 20th December 1849, that the acts of pleaders entrusted with the general conduct of a case through the courts, are binding on their clients, but the principal sudder ameen has reported, in reply to a requisition from this court, that Chowdry Baidhur Raotha, the son of the appellant, *through whom* the money was lent, was present in court when the vakeel consented to abide the result of the defendant's statement made on oath. It is hereby ordered, that the appeal be dismissed, and that the order of the principal sudder ameen be affirmed. The defendant, having appeared unsummoned, will pay his own costs, and separate enquiry will be made into the appellant's assertion that the vakeel compromised his case in collusion with the defendant.

THE 27TH MARCH 1850.

No. 4 of 1850.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 31st December 1849.

Sikdar Jyesing Mahapatur, (Plaintiff,) Appellant,

versus

Chuckerdhur Karinga and Gungadhur Patjosee, sons of Ram Hurry Puhraj, (Defendants,) Respondents.

CLAIM, rupees 744-2-1-4, principal and interest of a *rahan tumusook*, dated 3rd Boisauk 1249 Umlee.

The plaintiff stated that Ram Hurry Puhraj, the defendant's father, held himself responsible for a sum of money due to his (the

plaintiff's) father from one Nityanund Saontra; and that on an adjustment of accounts taking place, the sum of rupees 400 was found to be due from the said Ram Hurry Puhraj; for which and the further sum of rupees 20, which he borrowed from the plaintiff to pay certain revenue due by him, he executed the bond, the cause of action, promising to pay the full amount, viz. rupees 420, at or before the ensuing Ruth Jatra festival, and pledged, as security for his doing so, 5 battees, 2 mauns, 11 goonths, 8 biswas of land in Puhrajapore; but that no part of the amount had been liquidated, though it had been duly demanded from the defendants.

The defendants denied the claim *in toto*, and stated that neither they nor their father borrowed any money, either from the plaintiff or his father, and they neither executed any tumusook on account of Nityanund Saontra's debt, nor did the plaintiff demand the money from them. They also stated that they and their father had for many years quarrelled with the plaintiff and his father, and as the plaintiff had omitted to mention the name of his father, and the date of his death, or in what year and on what date their father executed the alleged *tumusook*, or what connection there was between himself and Nityanund Saontra and others, he should be nonsuited; and when the plaintiff stated the above particulars, and where the tumusook was written, they would be prepared to answer him.

The plaintiff's reply to the above was principally a repetition of the plaint. He merely added that his father's name was Sikdar Gop Mahapatur, and, in contradiction of his arzee, stated that the defendant's father borrowed the sum of rupees 20 to pay his revenue, *from his father*; he likewise stated that he was unable to quote the date of the bond first executed by the defendant's father, as it was made over to him when the one under which he sued was drawn out.

The principal sudder ameen held that it was under no circumstance possible to uphold the plaintiff's claim. *First.* Because in the tumusook, and likewise in the plaint and replication, it was represented that the defendant's father had agreed to pay the sum due from Nityanund Saontra, and executed a tumusook in favor of the plaintiff's father, in renewal of which the one filed in court was executed, whereas the plaintiff's witnesses had deposed that the defendant's father borrowed rupees 210 from the plaintiff's father, and gave the sum to Nityanund Saontra. *Secondly.* Because, notwithstanding the defendants had objected that the plaintiff had failed to state on what account the money was due from Nityanund Saontra, he omitted, in his reply, to offer any explanation on the point; and he filed no proof of the first tumusook having been written. *Thirdly.* Because the plaintiff, in his arzee, stated that defendant's father borrowed the money from *him*, and, in his replication, that they borrowed it from *his father*. And lastly, because the stamp paper on which the tumusook is written, was purchased nine

months prior to the date of the bond. And he accordingly dismissed the claim, with costs.

In appeal, the plaintiff urged that the tumusook had been duly proved by the attesting witnesses, and that it was neither necessary for him to show, nor for the court to enquire, on what account the money was due from Nityanund Saontra.

JUDGMENT.

As the plaintiff (appellant) has omitted to show either in the original suit or in appeal, on what account, or at what time, Nityanund Saontra borrowed the money from his father, or what connexion existed between Ram Hurry Pulraj and the said Nityanund Saontra, that he should engage to pay his debt to the plaintiff's father or when he executed the first bond; and the plaintiff, in his arzee, stated that the sum of rupees 20, out of the rupees 420, was borrowed by the defendant's father from *him*, and, in his replication, that he borrowed it from *his father*; and he further stated, in his replication, that the bond itself *was* executed in favor of his father, though it was written in his own name; and no cause has been shown why the second tumusook should have been written in his name, when the former one is alleged to have been in the name of his father; I entertain great suspicion regarding the genuineness of the bond, and seeing no reason to interfere with the principal sudder ameen's decision, I hereby affirm the same, and dismiss the appeal, without serving notice on the respondents.

THE 4TH MARCH 1850.

No. 5 of 1849.

Appeal from the decision of Moonshee Sheikh Gurriboollah, Sudder Ameen of Balasore, dated 7th November 1849.

Ramchunder Das and Lukhun Das, (Plaintiffs,) Appellants,

versus

Bluggutchurn Mhaintec, Sreemunt Dukhin Rah, and Hurry Surrun Das, (Defendants,) Respondents.

CLAIM, possession of a 10 annas, 13 gundahs, 1 cowree, 1 krant share of talook Paneechutter, pergunnah Bunchas, with wasilaut, from 1252 to 1255, at rupees 137-13-1-6-1 kt. per annum. Suit laid at rupees 763-8-10-10.

The plaintiffs, who are by birth the sons of Hurry Surrun Singh, stated that they were respectively adopted by their uncles, Urjoon Das and Bhujun Das, and thereby stood in the relationship of nephew to Hurry Surrun, their natural father, with whom they lived, and purchased with their joint funds several estates, and among others a 2 annas share of tuppa Malecunch, the property in dispute, which, on being separated from the parent estate, was formed into an independent talook under the name of Paneechutter, and was

recorded in the collectorate records in the name of Hurry Surrin Das, who, unknown to the plaintiff, sold one-half of it, on the 2nd September 1841, to Bhugutchurn Mhaintee, and the other half, on the 28th Poos 1252, to Sreemunt Dukhin Rah; and as they, the plaintiffs, were each entitled to a 5 annas, 6 gundaks, 2 cowrees, 2 krants share of the property, and Hurry Surrin had no right to sell the whole of it, they have instituted the present suit to recover possession of their shares. And in a supplementary plaint after the answer of Bhugutchurn Mhaintee had been filed, they stated that Hurry Surrin Das had only sold their 10 annas share of the property, and was himself in possession of the remaining 6 annas, also that, after Bhujun Das adopted Lukhun Das, his wife had a son, by name Sheeb Das, since deceased.

Bhugutchurn Mhaintee stated that Hurry Surrin Das, after purchasing the 2 annas share of Maleeunch in August 1841, was unable to pay for the same, and he in consequence sold one-half of his purchase to him for rupees 650; and if the plaintiffs had any right to the property, their names would have been recorded as proprietors in the settlement records. He also stated that the plaintiffs were not adopted by Urjoon Das and Bhujun Das, and that Urjoon Das died before Ramchunder was born; and the said Ramchunder Das, in the plaint filed by him against Bikram Sing, and likewise in the rahinnamah executed by the said Bikram Singh, is stated to be the son of Hurry Surrin Das, and that Bhujun Das's son, Sheeb Das, was two or three years older than Lukhun Das; and lastly, that Hurry Surrin Das had only sold 8 annas of the disputed property to him, and 2 annas to Sreemunt Dukhin Rah, and was himself still in possession of 6 annas, and consequently the plaintiff's statement that he had sold the whole was entirely false; and if, as alleged by them, the sale took place unknown to them, they would have preferred objections when the dakhil kharij case was pending.

Sreemunt Dhukin Rah stated that he merely purchased a 2 annas portion of the share of Hurry Surrin Das in the disputed property, and therefore the plaintiff's claim against him was inadmissible.

Hurry Surrin Das stated that the plaintiffs had no right to a share in the property, and that they had separated from him 6 or 7 years; and as they were present at the time he sold the property, they would have opposed his selling it if they had any just claim thereto.

The plaintiffs, in reply to Bhugutchurn Mhaintee, stated that Urjoon Das died 5 years after adopting Ramchunder Das, and Bhujun Das 10 years after he adopted Lukhun Das.

The sudder ameen held that, notwithstanding the writer of the *jatuks*, or birth certificates filed by the plaintiffs, as well as the other witnesses cited by them, had deposed to the fact of their adoption by Urjoon Das and Bhujun Das, no reliance could be placed on their evidence, because the said certificates were not only wanting in the usual marks of authenticity, but they bore the appearance of

having been recently written, and in the rahinnamah executed by Bikram Singh on the 25th December 1837, in favor of Ramchunder Das, and likewise in the petition of plaint filed by Ramchunder Das against Bikram Singh on the 7th April 1840, Ramchunder was stated to be the son of Hurry Surrin Das, which would not have been the case had he been adopted by Urjoon Das; and for these and other reasons stated in his decree, being of opinion that the suit had been instituted by the plaintiffs in collusion with their natural father, Hurry Surrin Das, to defraud Bhugutchurn Mhaintee, he dismissed their claim.

In appeal, the plaintiffs urged nothing new: they principally objected to the sudder ameen having dismissed their suit, notwithstanding he admitted that their witnesses had deposed to the fact of their adoption.

JUDGMENT.

The appellants have filed no documentary evidence dated prior to the sale of the property in dispute to Bhugutchurn Mhaintee in September 1848, to show that they were adopted by Urjoon Das and Bhujun Das, with the exception of the birth certificates, and these documents, as remarked by the sudder ameen, are wanting in the usual marks of authenticity, viz. they had not been rubbed or stained with turmeric, though it is admitted by both parties that it is customary so to stain such documents. And it appears from the decree of the sudder ameen of the 16th November 1843, in the suit instituted by the plaintiffs against their natural father, Hurry Surrin Das, and Gocoolbeharry Singh, claiming a 13 gundahs, 1 cowree, 1 krant share of "*arazee mowajeeb*," or certain miscellaneous lands, in tuppā Poorsindo, pergunnah Sosso, which was adjusted by *solanamah*, that, although the defendant Gocoolbeharry stated that the plaintiffs were not the adopted sons of Urjoon Das and Bhujun Das, and that the suit had been instituted by them in collusion with their father, Hurry Surrin Das, the plaintiffs did not file the *jutuks*, or birth certificates, as they naturally would have done, had they, at that time, been in existence; and I therefore coincide in opinion with the sudder ameen that they have been fabricated for the present occasion, and that the plaintiffs have instituted this suit also at the instigation of their father Hurry Surrin Das; for, if such were not the case, their names would have been recorded in the settlement papers as joint proprietors of the estate with Hurry Surrin Das, and they would not, according to their own statement, have delayed for six years after they became aware of the sale, and till 8 years from the date of the sale itself, to institute the present suit for its reversal. And as the date of the sale to Bhugutchurn Mhaintee took place prior to that made to Gocoolbeharry Singh, it is to be inferred that they would first have sued to set aside the prior sale. Moreover, in rahinnamah, dated 25th December 1837, executed by Bikram Singh Bidyadhur Mahapatr in favor of Ram-

chunder Das, and likewise in the petition of plaint filed by the latter against the former on the 7th April 1840, for the recovery of the amount of the *rahinnamah*, Ramchunder Das is stated to be the son of Hurry Surrun Das. I therefore see no reason to interfere with the sudder ameen's decision, and hereby confirm the same, and dismiss the appeal, without serving notice to respondents.

THE 7TH MARCH 1850.

No. 4 of 1850.

Appeal from the decision of Moheschunder Roy, Moonsiff of Dhumuaghur, dated 20th December 1849.

Nissakur Dukhin Kowat, (Defendant,) Appellant,

versus

Bimbadhur Dhul, (Plaintiff,) Respondent.

CLAIM, rupees 10-15-8, on account of the rent of 1 maun, 3 ghoonts, 3 biswas of land in mouzah Buncapal, from 1252 to 1254 Umlee, with interest.

The defendant did not enter appearance before the moonsiff, though stated to have been served with the usual notices, and the suit was decreed *ex parte*.

The defendant, in appeal, denied cultivating the land, and stated that he resided at Tajpore, and not at Maindah, where the notices were served in accordance with the plaint; and as it appears that the chowkeedar of the latter village granted the receipts for the notice and proclamation, and the witnesses to the serving of them are servants of the plaintiff, likewise that three out of the four witnesses cited by the plaintiff to prove that the defendant cultivated the land, deposed that he had ceased to cultivate it for two years prior to the institution of the suit, and the plaintiff did not file his *bean* accounts in the canoongoe's office for any of the years on account of which he claimed the rent, until 7 days before he instituted it, there exists great doubts regarding the justness of the claim. It is therefore ordered, that the decision of the moonsiff be annulled, and that the case be remanded, in order that the notice may be served at the defendant's alleged place of residence, and that he may have an opportunity of defending the suit. The value of the stamp of appeal will be refunded as usual, and the costs paid by the party eventually cast.

THE 7TH MARCH 1850.

No. 87 of 1849.

Appeal from the decision of Mohummud Arshud, Moonsiff of Kendraparah, dated 31st August 1849.

Poorsuttum Samul, (Plaintiff,) Appellant,

‘ *versus*

Kesub Naik, Oordub Naik, and the sons of Purmessur Swain, Hurry Swain, and Urjoon Swain, and Russeck Naik, their surety, Respondents.

CLAIM, rupees 31-14, principal and interest of a tumusook, dated 11th Cheit 1251 Umlce, payable six months after date.

Kesub Naik and Oordub Naik denied borrowing the money, and stated that the former was in Calcutta when the bond was written.

Hurry Swain admitted that his father Purmanund Swain executed the bond conjointly with Kesub Naik and Oordub Naik, and stated that, after his father's demise, he offered to pay his share.

Russeck Naik denied that the three persons named in the bond borrowed any money on his security, and stated that Purmessur Swain alone borrowed the sum of rupees 20-8, and executed a bond on the 11th Cheit 1251, for the payment of which he stood security, and when, after paying rupees 2-8, Purmessur Swain died, the plaintiff placed a peadah over him (the surety) he caused his heir's ornaments to be sold, and paid him rupees 12, but he refused to grant a receipt for the amount until the rest of his debt was paid. •

The moonsiff, on certain conjectural (and very unsatisfactory) grounds, held that the plaintiffs had fraudulently included Kesub Naik and Oordub Naik in the bond, and in consequence dismissed the claim, though the witnesses to the bond deposed to its due execution by all three defendants.

JUDGMENT.

The witnesses to the tumusook have deposed to its due execution on the part of all three defendants; and Hurry Swain, the son of Permessur Swain deceased, not only acknowledges that his father executed it conjointly with Kesub Naik and Oordub Naik, but Russeck Naik, the brother of the said Kesub and Oordub Naiks, acknowledges that he stood security for a bond of the same amount and the same date, executed by Purmessur Naik in favor of the plaintiff; therefore, although he denied that the bond filed by the plaintiff is the one for which he stood security, it is clear that he has done so to extricate his brothers from the plaintiff's claim, and that the tumusook filed is the genuine one. Moreover, I consider that Kesub Naik has altogether failed to prove that he was at Calcutta when the tumusook was written; certain witnesses named by him stated that he went to Calcutta in Aughun, but none of them stated when he returned, and

their evidence is otherwise unworthy of credit. And although the moonsiff states that Purmessur Swain lived at a great distance from the other defendants, there is no proof of the fact; for though they resided in different pergunnahs, they may still live very near to one another, and I can see no discernible difference between the signature of Kesub Naik in the tumusook, and that affixed to the vakalutnamah granted by him, and there are no grounds for the moonsiff's stating that the name of Kesub Naik is written by the person who wrote the bond. I therefore decree the appeal, and reverse the decision of the moonsiff, which is based merely on conjectures. The appellant's costs in both courts will be paid, with interest, by the respondents.

THE 8TH MARCH 1850.

No. 6 of 1850.

Appeal from the decision of Mohummud Arshud, Moonsiff of Kendraparah, dated 11th December 1849.

Gungadhur Dul, and after his death, Juggoo Dul, (Plaintiff),
Appellant,

versus

Dyaneedhee Kundooee, (Defendant,) Respondent.

CLAIM, rupees 30-3-1, under a tumusook, dated 15th Assin 1252 Unlee, viz., rupees 20 principal, and rupees 10-3-1 interest.

The plaintiff stated that the defendant borrowed the money on the date stated in the bond, and promised to repay the same in four months and pledged as security two bullocks.

Defendant denied borrowing the money or executing the tumusook, and stated that the plaintiff had forged the document in his name, in consequence of his having refused to sell the bullocks referred to in the plaint, at a price which he was unwilling to accept for them, and that when he was sending them through his brother for sale to Balasore, the plaintiff through his son lodged a complaint at the Asserissur thanna, to the effect that he had stolen two bullocks, which the plaintiff had purchased and placed in his charge, and was taking them to Balasore for sale, and caused the bullocks to be brought back, which matter was adjudicated before the criminal courts.

The moonsiff held that, although plaintiff's witnesses had deposed to the execution of the tumusook on the part of the defendant, and to his having pledged the two bullocks as security for the repayment of the sum borrowed, his claim could not be maintained, in consequence of the contradictory statement made by him and his son, viz. the one having stated before the court that the bullocks were pledged to him, and the other before the police darogah that his father had purchased them, and placed them in charge of the defendant; and he dismissed the suit.

JUDGMENT.

Although it appears from the roobakaree of the kauzee adawlut, dated 4th April 1849, that Abhee Dul, the plaintiff's son, stated before the darogah of thanna Asserissur, that his father had placed the bullocks in charge of the defendant, and that he had clandestinely taken them away to Balasore to sell; it also appears from the same document, that the plaintiff subsequently told the darogah that the bullocks were only mortgaged to him; it is therefore evident that Abhee Dul only made the said statement to induce the darogah to interfere in the matter, as he could not have done so had he merely stated that the bullocks had been pledged to him. And if the plaintiff was the only person who acted fraudulently in the matter, this might have been deemed sufficient reason for dismissing his claim; but such is not, in my opinion, the case; for it appears from the evidence of the plaintiff's witnesses that the bullocks were pledged to the plaintiff, and it is not at all improbable that the defendant to defraud him took them to Balasore to sell. But whatever the real state of the case may be, the moonsiff should not have admitted the report of the darogah and the roobakarees of the fonjdaree court as proof, without summoning and examining any witnesses in support of them, and having done so I consider his investigation incomplete. It is therefore ordered, that the case be remanded to the moonsiff for re-investigation, and he will call on the defendant to establish by the evidence of witnesses, if he is able, that the plaintiff wished to purchase the bullocks at a price below their value, and that he forged the *tumusook*, because he refused to sell them; and he will at the same time receive any further evidence the plaintiff may wish to adduce in support of his claim. The value of the stamp of appeal will be refunded, and the costs paid by the party eventually cast in the suit.

THE 12TH MARCH 1850.

No. 8 of 1850.

Appeal from the decision of Sheikh Gurriboollah Moonsiff of Balasore, dated 19th December 1849.

Rugoonath Rai, (one of the Defendants,) Appellant,

versus
 Chuckerdhur Mhaintee, (Plaintiff,) Respondent.

CLAIM. possession on a 2 annas 11 gundahs share of mouzah Dhurrumpore, pergunnah Balkhund, and its exemption from sale in execution of a decree against Balkishen Das. Suit laid at rupees 25-10, the amount of sudder jumma. Instituted 30th December 1848.

The plaintiff stated that mouzah Dhurrumpore was the joint property of his father, Bunmallee Mhaintee, and others, and that his father held a 5 annas, 10 gundahs, 3 cowrees share therein; and

that after the death of his father, his elder brother, Balkishen Mhaintee, got 2 annas, 19 gundahs, 3 cowrees, and himself 2 annas 11 gundahs of the said share; and notwithstanding Balkishen Mhaintee sold his share to Rugoonath Rai, Sadoo Churn Mhaintee caused the entire mouzah (*i. e.*, 5 annas, 10 gundahs, 3 cowrees share) to be advertised for sale in execution of a decree obtained by him against Balkishen Mhaintee; and he in consequence sued Balkishen Mhaintee and the other joint proprietors, together with the said Sadoo Churn Mhaintee, for possession of his share. And in a supplementary plaint, filed on 30th March 1848, he prayed that Rugoonath Mhaintee, who had purchased 2 annas of his share also, might be included among the defendants.

Sadoo Churn Mhaintee, defendant, stated that the plaintiff had no right to the disputed property, that, if he had, his name would have been inserted in the settlement records, and he would have opposed the registration of Rugoonath Rai's name as proprietor of the 3 annas share sold to him by Balkishen Mhaintee; and he would also have filed a *mozahim*, when he, Sadoo Churn, brought the 2 annas 10 gundahs share, now claimed by him as a 2 annas 11 gundahs share, into the *lotbundee* for the recovery of the purchase money paid by him to Balkishen Mhaintee, on account of 2 annas of the said share, when it was advertised for sale for arrears of revenue. He likewise stated that Balkishen Mhaintee had caused the plaintiff to prefer the suit to defraud him, and that, as the plaintiff had not sued Rugoonath Rai, the purchaser of the 3 annas share, he should be nonsuited.

Bhagbut Mhaintee and Kishen Churn Mhaintee denied the plaintiff's claim, but stated that they had nothing to do with it, as they were only in possession of their own shares.

Rugoonath Rai stated that the plaintiff had no right to the disputed property; that when Balkishen Mhaintee's 5 annas, 10 gundahs, 3 cowrees share was advertised for sale in execution of decree held by Shamanund Dey Mohajun, he sold a 3 annas, 2 gundahs, 2 cowrees portion of it to him, and caused the sale to be stayed, and the plaintiff attested the deed of sale, which he would not have done had he possessed any right to the property. And that he purchased other 2 annas at a decree sale, and the remaining 8 gundas 1 cowree portion belonged to Balkishen Mhaintee.

The plaintiff, in his replications to the above answers, pleaded that until the completion of the settlement of the property in dispute, he and Balkishen Mhaintee lived together, and as there was no dispute between them, there was no necessity for his causing his name to be recorded as joint proprietor; also, that as Balkishen with his knowledge sold a 2 annas, 19 gundahs, 3 cowrees share of the property, the proportionate *sudder jumma* of which is rupees 30, to Rugoonath Rai, and he attested the *kubalah*, there was no occasion for his opposing its *dakhil kharij*; and if Rugoonath Rai had frau-

duently inserted in the kubalah, which was a Persian document, a 3 annas, 2 gundahs, 2 cowrees, in place of a 2 annas, 19 gundahs, 3 cowrees share, his (the plaintiff's) claim could not be prejudiced thereby; as the fact of the sudder jumma of the property purchased by Rugoonath Rai having been specified in the bond to be rupees 30, was proof that he had only purchased the smaller share. And when Sadoo Churn Mhaintee caused a 2 annas kismut of the mouzah to be advertised for sale in execution of his decree, he did file a petition of objection in consequence of Balkishen Mhaintee's share having been already sold, and an order was passed to the effect that Balkishen's rights and interests would alone be sold.

The moonsiff held it to be fully proved by the documentary and oral evidence that the property in dispute formed part of the 5 annas, 10 gundahs, 3 cowrees share of mouzah Dhurrumpore, the joint hereditary property of the plaintiff and Balkishen Mhaintee, who had made a private allotment of their shares, the former claiming only a 2 annas 11 gundahs portion. And although Rugoonath Rai had not filed the kubalah or deed of sale, it appeared from the collector's perwannah, dated 6th September 1848, copy of which had been filed by the said defendant, that he had purchased a 3 annas, 2 gundahs, 2 cowrees kismut, from Balkishen Mhaintee; and therefore, notwithstanding the plaintiff originally was entitled to an equal share with Balkishen, the remaining 2 annas, 8 gundahs, 1 cowree kismut only must be considered as his share; and as 2 annas of the said share had been sold in execution of a decree against Balkishen Mhaintee, the sale should be cancelled. And he accordingly decreed the said 2 annas, 8 gundahs, 1 cowree share as the property of the plaintiff, and directed that the costs incurred by him were to be defrayed by Balkishen Mhaintee, and that the other defendants were to pay their own costs.

Rugoonath Rai urged, in appeal, that the property belonged solely to Balkishen Mhaintee, but offered no further proof in support of his assertion.

JUDGMENT.

Since it is established in evidence that the 5 annas, 10 gundahs, 3 cowrees share of mouzah Dhurrumpore was the property of Bunmalee Mhaintee, who deceased, leaving two sons, Balkishen Mhaintee and the plaintiff, it is quite clear that the plaintiff possessed an hereditary title to share the property with his brother; and although the defendants assert that he possessed no such title, they neither deny that the property belonged to Bunmalee Mhaintee, nor that the plaintiff is his son; nor have they attempted to show that the plaintiff has in any way alienated his rights. I therefore see no reason to interfere with the moonsiff's decision, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondent.

THE 20TH MARCH 1850.

No. 10 of 1850.

Appeal from the decision of Moheschunder Roy, Moonsiff of Dhumna-ghur, dated 26th December 1849.

Kalee Pundah, (Defendant,) Appellant,

versus

Dinbundoo Biswal, (Plaintiff,) Respondent.

CLAIM, possession of 5 mauns, 6 ghoots, 12 biswas of lakhiraj land in mouzali Gunissurpore, pergunnah Jhajpore, together with price of some bamboos, and wasilat, according to the conditions of a kubalah, dated 13th Maugh 1254 U. Suit laid at rupees 142-8-10.

The plaintiff sued defendant because, after selling him the land with the trees thereon for the sum of rupees 300, he refused to deliver over possession, and himself cut the bamboos which grew thereon.

The defendant answered that he sold the ground but not the trees, and executed a kubalah on the date stated, and the plaintiff being absent at the time, his brothers executed a document engaging that the trees were to remain the property of defendant; and that he only received rupees 100 of the purchase money. He also stated that, on a dispute taking place between the plaintiff's brothers and himself about the trees or garden, the pergunnah canoongoe tried to persuade him to accept the further sum of rupees 60 for the land and garden, but he refused to do so.

The plaintiff replied that it was contrary to custom to sell the land and the trees separately, and that the defendant's assertion that the canoongoe attempted to adjust the dispute about the garden, was false; and that his brothers had paid the full sum of rupees 300 to the defendant, when he executed the kubalah.

The defendant adduced no proof whatever in support of his assertions. And the moonsiff, being of opinion that the plaintiff's claim was clearly established by the evidence of the witnesses to the kubalah executed in his favor, and the kubalah under which the defendant held the land, which was transferred by him to the plaintiff when he re-sold it, decreed accordingly.

The defendant, in appeal, pleaded that when the suit was pending before the moonsiff, his properties were advertised for sale on account of arrears of revenue both at Balasore and Cuttack, and he was obliged to proceed to the former place to make arrangements for the payment of the sums due, and was therefore unable to adduce proof in support of his pleas. He, however, offered none when the case was pending in appeal; and as I consider the moonsiff's decision is perfectly correct, it is hereby ordered, that the appeal be dismissed, and the decision of the lower court be affirmed, without serving notice on the respondent.

THE 25TH MARCH 1850.

No. 9 of 1850.

Appeal from the decision of Moonshee Gurriboollah, Moonsiff of Balasore, dated 18th December 1849.

Poholad Das, (Defendant,) Appellant,

versus

Bhugwan Das, (Plaintiff,) Respondent.

CLAIM, rupees 228, principal and interest of a tumusook, dated 12th Maugh 1256 U. the conditions of which were that the amount was to be repaid in five months, and that all payments were to be recorded on the back of the bond.

The defendant denied the claim and stated that he was at a place called Choramun when the bond is alleged to have been executed by him, and that the plaintiff had through enmity instituted the suit against him, in consequence of his having made over to his wife, by will, mouzah Kurroo, which the plaintiff wished to get a lease of.

The plaintiff replied that there was no secrecy or concealment about the execution of the bond in the present case, or of that filed in the suit instituted by him against the defendant in the court of the sudder ameen, which was executed on the same date, for both the stamp papers were purchased by the defendant's son Radha Gobind Das, in his own name, and the bond filed in this case was in his handwriting, and is attested by several respectable persons. Defendant also wrote him a klut, or letter, through his gomashtha and relation Oordub Das, on the 15th Bhadoon, acknowledging the debt; and that he was not at Choramun as alleged by him on the date of the bond, would be proved from his having borrowed and repaid money to other mohajuns at Balasore on the 12th, 13th, and 14th of the month of Maugh; and prior to the institution of the suit he, the plaintiff, presented a petition to the register of deeds, mentioning the execution of both tumusooks, at the time the defendant, with the view to defraud him, caused the document, by which he alleged that he made over mouzah Kurroo to his wife, to be registered.

The moonsiff held that the execution of the bond by the defendant was satisfactorily established by the evidence of the plaintiff's witnesses, and the general circumstances of the case as detailed in his proceedings, for, notwithstanding the defendant, through his witness Ram Saho, filed a *souda-namah* alleged to have been executed by himself on the 13th Maugh 1255 at Choramun, in favor of the said Ram Saho, who with three other persons deposed to the genuineness of the document, Ram Saho subsequently retracted his first statement, (which was not made on oath or solemn declaration,) and deposed on oath that the *souda-namah* had been put into his

hands by the defendant, and that he knew nothing about the document; and he accordingly decreed the plaintiff's claim, and committed Ram Saho and the witnesses, who had certified the execution of the *souda-namah* on the part of the defendant, together with the defendant's son, to stand their trial before the magistrate, on a charge of issuing a forged document and giving false evidence in support of it, &c.

The defendant pleaded, in appeal, that if he had borrowed at one time the sum of rupees 500 from the plaintiff, he would have executed one and not two tumusooks, as alleged by the plaintiff, and that Rajkishore Das, one of the witnesses cited by the plaintiff to prove that he (the defendant) was at Balasore when the bond filed by him was executed, had first deposed that he had borrowed the sum of rupees 100 from him, and executed a *souda-namah* in his favor at Chooramun on the 13th Maugh 1251, although a month or five weeks afterwards, during which time the plaintiff got him into his power, he retracted and stated that the money was advanced, and that the document was written at Balasore. Also that Ram Saho, defendant's own witness, on the 15th August 1849, deposed that he (the defendant) had executed a *souda-namah* in his favor at Chooramun, on the date on which the bond, the cause of action, is said to have been executed at Balasore, but two days afterwards the plaintiff induced him likewise to give false evidence, and retract his first statement; and that the cause of the signature attached to the *souda-namah* filed by the said Ram Saho, not corresponding with the defendant's signature affixed to the *vakalatnamah* executed by him in the present suit, is that he had not his spectacles with him when he signed the *souda-namah*. He further denied that the bond filed by the plaintiff was in the handwriting of his son, Radha Gobind Das, &c.

JUDGMENT.

From the circumstances of the stamp-papers on which the bond for rupees 200 filed in the present suit, as well as that for rupees 300 filed in the suit, instituted by the plaintiff in the court of the sudder ameen, were written, having been purchased by Radha Gobind Das, the defendant's son, and the bond itself being evidently written by the said Radha Gobind Das, in whose handwriting there are two other petitions filed with the *nutlee*, the one dated 2nd July 1849, exhibiting the names of the defendant's witnesses, which the defendant's vakeel admits was written by Radha Gobind Das, and the other, dated 15th August 1849, reporting the attendance of Ram Saho, one of the said witnesses, there exists no doubt in my mind that the defendant executed the bond; and whereas there is no Regulation prohibiting persons from borrowing one sum of money, or two sums of money, under two separate bonds on the same date,

there are apparently advantages attending the former mode of proceeding, viz., had the whole sum of rupees 500 been borrowed under one bond, the value of the stamp required would have been rupees 4, but by dividing it into two loans of rupees 200 and rupees 300, stamps of the respective value of rupees 1 and 2 were sufficient; there is therefore nothing very surprising in two bonds having been executed by the same parties on the same day. And although Rajkishore Kur, a witness cited by the plaintiff, when first examined on the 28th June 1849 without making solemn declaration, stated the *souda-namah*, written in the Bengalee character, and bearing date 13th Maugh 1255, (exhibit No. 79,) produced by him, was executed by the defendant Bhugwan Das at Chooramun, and when he was re-examined on oath on the 2nd of August on the application of the plaintiff, he stated it was written at Balasore, I consider his evidence immaterial to the issue of the case, and throw it out altogether from the scale, for a bond, dated the 13th Maugh 1255, can afford no proof whether the parties to it were at Balasore or Chooramun, on the 12th of Maugh, as the two places are only 10 cos distant from one another; and the plaintiff's attempt to make it appear that the said *souda-namah* bore the date of the Bengal era, and that it corresponded with the 12th of Maugh 1255 Umlce, is altogether futile; for the 13th Maugh 1255 Umlce era, corresponds with the 12th Maugh 1254 Bengal era, and they both again correspond with the 24th January 1848, whereas the 12th Maugh 1255 Umlce, the date of the bond filed by the plaintiff, corresponds with the 23rd January 1848; and it would consequently have been better had the plaintiff been satisfied to rest the correctness of his claim on the bond itself and the evidence of the subscribing witnesses. With regard to the evidence of Rām Saho, the witness cited by the defendant to prove that he (the defendant) executed a *souda-namah* in his favor on the 12th of Maugh 1255 Umlce at Chooramun, as he twice gave evidence on oath before the moonsiff, at first admitting and afterwards denying the truth of the defendant's statement, and the moonsiff, in consequence, committed him on a charge of issuing a forged document, &c. to the magistrate, it cannot be admitted in support of the defendant's plea that he was at Chooramun on the date of the bond. It is therefore ordered, that the appeal be dismissed; and the decision of the moonsiff be affirmed, without serving notice on the respondent. The moonsiff will be informed that he should have noticed the contradictory statements made by Rajkishore Das in his proceedings, and not simply have stated that he had deposed to the money relating to the *souda-namah* filed by him having been borrowed at Balasore.

ZILLAH DACCA.

PRESENT: H. SWETENHAM, ESQ., JUDGE.

THE 1ST MARCH 1850.

No. 20 of 1848.

Appeal from the decision of Mahomed Nazim, Principal Sudder Ameen of Furreedpore.

Joogulkishore Race, (one Defendant,) Appellant,

versus

Bhagbut Chunder, (Plaintiff,) Respondent.

THE following five defendants did not appeal: 2, Gour Chunder Race; 3, Gokool Chunder Race; 4, Chunder Koomar Race; 5, Musst. Solochuna, widow of Gopee Kishen and mother of Soorj Koomar Race, and 6, Chunder Koomar Race.

Vakeel of Appellant—Nundlat.

Vakeel of Respondent—Gour Chunder.

Suit for possession of land under a deed of mortgage with conditional sale, valued, including mesne profits, rupees 11,746-2-8.

The property claimed was 6 annas share of kismut Baroobagheea, &c. &c., pergumah Nuseeb Cháhee, jote jumma in the name of Oodoynarain Roy, full jumma 321-1-5, 6 annas jumma 120-6-8.

Plaintiff sets forth defendants had mortgaged the said property with conditional sale, that the mortgage had been foreclosed and the sale made conclusive.

Joogulkishore Race, one defendant, denied the circumstances declared in the plaint, and maintained that the property claimed was his solely, by virtue of a deed of gift from the other defendants; that he held 2 annas share in his own right, and, including the 6 annas share gifted, he was proprietor of 8 annas; that the 6 annas share had been once attached to satisfy the decree of Bungsee Buddun, but was released on proof of defendant's right. Defendant stated the plaintiff had under-valued the property at rupees 1,680, it was worth rupees 3,500, and how could Soorj Koomar Race have sold, who died a minor?

Reply and rejoinder were to the same effect.

Defendants, Nos. 2 to 6, allowed the case to go by default.

The principal sudder ameen, by proceedings, 22nd November 1847, declared the points to be at issue: plaintiff to produce the deed of sale and to prove it, and the proceeding or copy thereof by which the mortgage was foreclosed and the sale made conclusive; to prove

sellers were in possession, at the period of transfer, that Soorj Koomar Raee was then of age, and Solochuna seised in hereditary right. Defendant was required to produce the deed of gift and to prove it by evidence, to prove his possession of 8 annas share, and Soorj Koomar, a minor, when the deed of sale was executed in favor of plaintiff, to produce copy of proceedings on his claim in case of Bungseebuddun, and copy of claim in case of Mohun Chunder and of his derkhast buebat. On the 30th May 1848, the principal sudder ameen decreed possession to plaintiff.

Appellant pleads the judgment of the principal sudder ameen prematurely given, before appellant could produce the deed of gift, which had been filed in another case, and with inadvertence to the time allowed by the principal sudder ameen for causing the attendance of appellant's witnesses.

The principal sudder ameen's order of the 13th May, on the nazir's report of the 10th of the month, admits the construction maintained by the appellants. The principal sudder ameen directed, if the witnesses, who promised, on serving of the subpoena, to attend in 15 days, failed to attend in the time promised; defendant shall swear their attendance necessary, as well as those witnesses on whom subpoenas had not been served, within seven days. Three witnesses on the 9th May promised to attend in 15 days, their attendance was due the 24th May, to which date add the stipulated seven days of the principal sudder ameen, the period of default would be the 1st June, the decision was passed two days prior thereto or the 30th May.

Under these circumstances, I decree the appeal, reverse the principal sudder ameen's decision, and remand the case, in order that the appellant may have a fair opportunity of carrying out the requirements under the principal sudder ameen's proceedings, dated 22nd November 1847, when the case will be decided on its merits. The value of the stamp paper of appeal to be restored to appellant.

THE 2ND MARCH 1850.

No. 298 of 1848.

Appeal from the decision of Kally Kinkur Sein, late Moonsiff of Naraingunge.

Trilochun Chatterjeah, (Plaintiff,) Appellant,
versus

Kallee Shunkur, Mudhoo Soodun, Kishen Kaunth, Lukhee Kaunth,
and Madhub Chundur Palls, (Defendants,) Respondents.

Vakeels of Appellants—Rammunee Bhose, Puddum Lochun, and Hurree Kishore.

Vakeels of Respondents—Gour Chunder and Bungo Chunder.

SUIT, arrears of rent from 1247 to Aughun 1252, at rupees 25-6-8½ per annum, rupees 144-4½, and interest, rupees 83-14½.

The moonsiff decreed the rent but not the interest: parties to pay their own costs.

Plaintiff appeals for the interest and costs.

It appears appellant has not, although twice allowed in the lower court intervals for so doing, adduced evidence or proof of having demanded and never sued summarily or regularly for it, until this suit was instituted. On the other hand it is proved by evidence that respondents were willing to pay their rent, that at different periods they tendered rupees 100 when about that sum was due, and subsequently rupees 175, and appellant rejected the same. There appears therefore no just ground to saddle them with interest or with appellant's costs. The appeal is dismissed, the moonsiff's decision is confirmed, respondent not summaqed: parties to pay their own costs in appeal.

THE 4TH MARCH 1850.

No. 19 of 1849.

Appeal from the decision of Nyemooddeen, Moonsiff of Lechragunge.

Essan Chunder Chuckerbuttee, (one Defendant,) Appellant,

versus

**Ooma Soonderce Debbea and Ram Manik Chuckerbuttee, (Plaintiffs,
Respondents.**

Four other Defendants have not appealed.

Vakeel of Appellant—Gour Chunder.

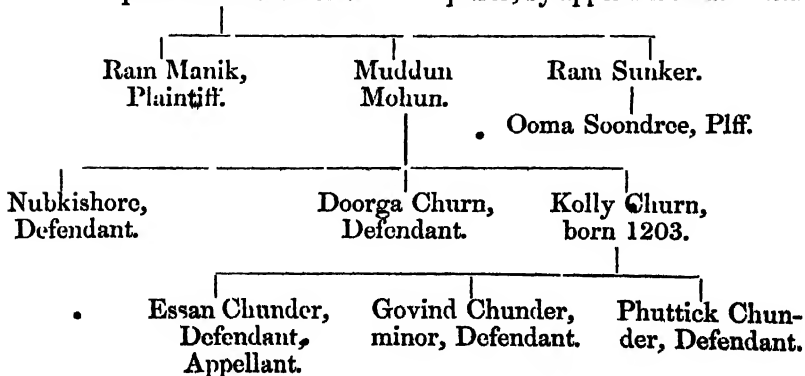
Takeels of Respondents—Teeluk Chunder (and Lukheekant absent.)

SUIT for two-thirds of a dwelling house and 6½ gundas of land, valued at rupees 18, together with proceeds 2-0-5, total rupees 20-0-5.

A genealogical table will best elucidate the nature of the claim.

Bishenpershad, original acquirer, by plaintiffs' statement.

**Kishen Mungle, brother of Bis-
henpershad's wife, original ac-
quirer, by appellant's statement.**



Plaintiff stated, Bishenpershad, on the 7th Poos 1192, purchased a *baree* and two *packees* of land, kismut Kallee Aheer, *pergunnah* Shaistanugger, from Rajkishen Chund, for rupees 3, in the name of Kishen Mungle, his wife's brother. Bishenpershad continued in possession till death: he died, leaving three sons, who held in joint possession. In 1252 defendants admitted Kosseenath as tenant: he lived on the property a year and then went away: Kolly Churn's family took possession and raised a *chuppered* house. Kollykoomar, son of Ram Manik, sued in the criminal court without success. They built two more *chuppered* houses. Plaintiffs, dispossessed, sued in the civil court, but the case was struck off for neglect, 24th November 1847.

Essan Chunder denied the purchase by Bishenpershad, and asserted that Kishen Mungle made the purchase on his own account, and on the birth of Kolly Churn in 1203 he gifted this property to the infant by deed, *brito bhikya*. Bishenpershad was then living: into his hands Kishenpershad put all the documents. In 1219 Bishenpershad died, in 1220 Muddun Mohun died, then all the property was divided except that now litigated, which remained in Kolly Churn's possession 30 or 31 years. He died in 1249, and was succeeded by his children. In 1247 a fire occurred, in which, it was supposed, the title deeds were burned; but it seems Ram Manik concealed them.

Plaintiffs assert, in reply, how came the deed of sale in their possession? and why is it therein expressed that the purchase money was paid through Bishenpershad, if Kishen Mungle was the actual purchaser? If *brito bhikya* deed was given, the deed of sale would not be given. The right of plaintiffs had been established by arbitration, and though a sale was not made in 1239 a deed was drawn out for Ram Sunker's share, and after his demise for Ooma Soonderee's share: moreover, Essan Chunder's answer in the suit struck off for neglect was at variance with the answer filed by him in this suit.

The moonsiff decreed to plaintiff, whose right was proved by deed of sale, evidence, and former arbitration—the right claimed by defendant being neither proved by deed nor evidence.

Appellant has urged nothing, in appeal, to justify interference with the moonsiff's decision. The appeal is dismissed, with costs, the decree affirmed.

THE 5TH MARCH 1850.

No. 25 of 1849.

Appeal from the decision of Kalee Kinker, late Moonsiff of Nurraingunge.

Kishenkoomar Dutt, (one Defendant,) Appellant,

versus

Ramguttee Naug, (Plaintiff,) Respondent.

Ramkoomar Defendant has not appealed.

*Vakeel of Appellant—Bungo Chunder Juggernath.**Vakeel of Respondent—Annund Mohun.*

SUIT for rent and interest, rupees 16.

Plaintiff sets forth that Juswunt, the father of the appellant, purchased a dwelling (baree) at a jumma of one rupee per annum, appertaining to kismut Gobindee, from the person who sold him that kismut; that Kowula, the widow of Juswunt, succeeded her husband in possession and paid in 1243. He now claims rent from her heirs, her son, Kishenkoomar Dutt, and his nephew, Ramkoomar, who are in possession, from 1244 to 1254, Sicca rupees 11, interest 6-8-3, total Sicca rupees 17-8-3, or Company's rupees 18-10-7½, minus rent paid 2-10-7½, balance rupees 16.

Defendant denies his right to rent, and states the dwelling is not in kismut Gobindee, but there is a dwelling in tuppah Umbapore, near his house, which tuppah is held khas by Government, that dwelling he is anxious to take from Government.

The moonsiff passed judgment: plaintiff has filed two chalans, and five witnesses have been examined regarding his claim. Defendant nominated eight witnesses. Subpoenas were served on three of them: they did not attend. On the 31st October defendant was allowed five days to state on oath their attendance, and evidence was necessary; a further extension of five days for the same purpose was granted, the 9th November; but defendant defaulted. Defendant had not stated where they paid rent, and their possession was proved by evidence. It is also proved that Kishen Chunder was the gomastah of Musst. Kowula, and that he for her signed the chalan of 1243 for rupees 1-4, for the rent of one year and some months: there is a second chalan for 1244, and these chalans have no appearance of fabrication. He therefore decreed from 1243 to 1254, 11 years' rent 11 rupees, interest 6-8-3, total rupees 17-8-3, or Company's rupees 18-10-7½, less realized 2-10-7½, rupees 16, and interest pending trial, 15 annas 8 pie, total 16-15-8.

Appellant's principal plea is the absence of a kubooleut, but he obtained possession by inheritance. I therefore do not consider this plea, or the minor pleas of appellant, calculated to subvert the grounds on which the moonsiff has declared judgment for the respondent. But an error in the figures requires amendment. The

moonsiff has correctly decreed 11 years' rent, but has incorrectly stated from 1243 instead of 1244 to 1254. With that error amended, the decision is affirmed, and the appeal dismissed, respondent not having been summoned, parties to pay their own costs in appeal.

THE 8TH MARCH 1850.

No. 15 of 1848.

Appeal from the decision of Syed Abbass Allee, Principal Sudder Ameen of Zillah Dacca.

Kascekaunt Banoorjah, (Defendant,) Appellant,

versus

Birj Chunder, for self and guardian of Chunderkaunt and Soorj-kaunt, minors, sons of Rankaunt Banerjca, (Plaintiffs,) Respondents.

Vakeel of Appellant—Gholaum Abbass.

Vakeel of Respondent—Gour Chunder.

THIS is a second appeal from the preceding case No 17. Kascekaunt appeals the 335 rupees rent, with certain interest, and proportion of costs decreed against him.

Appellant's principal plea is that he paid into the collectorate rupees 926-14-4, and that the principal sudder ameen had given him credit only for rupees 591-14.

In appeal case No. 17, the amount allowed to credit by the principal sudder ameen was held not admissible: this appeal therefore falls to the ground." It is accordingly dismissed, with costs.

THE 8TH MARCH 1850.

No. 18 of 1848.

Appeal from the decision of Syed Abbass Allee, Principal Sudder Ameen of Zillah Dacca.

Kaleekaunt, and on his demise Mussumant Lukhee Preeah Debea, his widow, mother of Brijkaunt, Burdakaunt, and Rujune, minors, (Defendants,) Appellants,

versus

Brij Chunder Banerjca, for self and guardian of Chunderkaunt and Soorjkaunt, minor sons of Umurkaunt Banerjca, (Plaintiffs,) Respondents.

Vakeel of Appellant—Gholaum Abbass.

Vakeel of Respondent—Gour Chunder.

THIS is a counter appeal of the preceding case No. 16. Appellants are dissatisfied at the decree against them of rupees 1,022-10 $\frac{3}{4}$, with certain interest and proportionate costs.

Their plea is that they paid into the collector's office Company's rupees 1,468-2-8, and that the principal sudder ameen had given them credit only for rupees 472-10- $\frac{3}{4}$.

On the grounds stated in the judgment in appeal case No. 16, this appeal is without foundation, the sum admitted to credit by the principal sudder ameen is rejected, therefore the claim to the larger amount in appeal is inadmissible. The appeal is dismissed, with costs.

THE 8TH MARCH 1850.

No. 17 of 1848.

Appeal from the decision of Syed Abbass Allce, Principal Sudder Ameen of Dacca.

Brijo Chunder Banerjea, for self and guardian of Chunderkaunt and Soorujkaunt, his minor brothers, all sons of Umurkaunt Banerjea, (Plaintiff,) Appellant,

versus

Kasseekaunt Banerjea, (Defendant,) Respondent.

Vakeel of Appellant—Gour Chunder.

Vakeel of Respondent—Lukheekaunt.

SUIT to recover rent with interest, rupees 3,273-2.

Plaintiff stated, Bungo Chunder had three sons, Umurkaunt, (father of appellant,) Kasseekaunt, (respondent,) and Kaleekaunt, between whom during his life time, in Sawun 1231, he divided his property. Appellant's grandfather had purchased at public sale 6 annas share of zemindaree Basdebraee, muzafat Ram • Kannoo Baboo, chukla Ameerabad, chukla Noorpoor, &c. • Appellant's father under the butwara succeeded to 2 annas thereof, and also to zemindaree chukla Racepore, muzafat Rauj Kishen Sein and talook Ram Kanaee Baboo, &c. Kasseekaunt agreed to pay to Umurkaunt rent Sicca rupees 142-5-8 $\frac{1}{2}$, on account of mouzah Chur Kishen Nuggur, &c. &c., and signed a kubooleut to that effect, 19th Sawun 1232. Kasseekaunt failed to pay according to his agreement. Umurkaunt therefore sued him for rent, with interest from 1232 to Poos 1241. Umurkaunt obtained a decree from the principal sudder ameen, No. 1454, which decree was confirmed on appeal to the Sudder: subsequently Kasseekaunt paid some portion of the rent into the collectorate, but recovered that amount from Umurkaunt by suit in the civil court.

The 6 annas share of Basdebraee was exposed to public sale, and was purchased the 28th Bysakh 1240, by Ram Kishen Raec: that sale was reversed 21st April 1835. An appeal was preferred to the Sudder: while the case was pending, suit No. 1454, above noticed, was decided. Kasseekaunt objected that purchaser had got possession, whereupon the principal sudder ameen disallowed portion of Umurkaunt's claim from Bysakh the 28th, 1240, the date of sale, to kist Poos 1241, rent 193-10-7-1, and interest 16-9-13, total

rupees 210-4-1, and decreed the remainder. On reverse of the sale the wasilaut was ascertained, and it appeared that Ram Kishen, the purchaser, had collected only rupees 81-4-12, consequently appellant claimed the balance formerly disallowed, and from Maugh 1241 to Sawun 1253: deducting rupees 81-4-12, they claim Sicca rupees 1,764-10-1, interest 1,304-8-7, total Sicca rupees 3,068-8-17-1, or Company's rupees 3,273-2.

Kasseekaunt answered: rupees 210-4-1 having been already dismissed, under Section 16, Regulation III. 1793, cannot be again sued; and twelve years having elapsed, the suit cannot be entertained under Section 14: the amount wasilaut recovered by plaintiff's father has not been deducted.

Plaintiff claims rupees 151-4-16-3, with interest, and again calculated interest on interest in opposition to Section 7, Regulation XV. 1793.

My rent from Maugh 1241 to Sawun 1253, eleven years seven months, rupees 1,744-12, plaintiff and their father having, with the object of oppression, refused to take, I paid the amount to the credit of chukla Racepore, muzafat talook Rauj Kishen Sein, into the collector's office, as follows:

18th Sawun 1247,	Rupees	70	11	11	5
10th Maugh 1248, ,,		455	0	0	
8th Poos 1249, ,,		227	8	0	
8th Assin 1252, ,,		171	13	1	1/2
21st ditto, ,,		23	13	3	
		<hr/>			
		926	14	4	

Add wasilaut decreed by the principalsudder ameen, case No. 10000	817	2	10	
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Total,...	1,744	1	2
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The principal sudder ameen stated the original rent claimed by plaintiffs amounts to Sicca rupees 1,764-10-1, equal to Company's rupees 1,881 9 10

From which he deducts the claim of 1240 and 1241, barred by statute of limitation and previously disallowed by court,

Sicca rupees 210-4-1, minus 81-4-12, Sicca rupees.....	128	15	9
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Or Company's rupees	137	9	0
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Paid into the collector's office according to statement of that office,	591	14	0
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Deduct wasilaut in case No. 10000,	817	2	10
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	1,546	9	10
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Balance,.....	335	0	0
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The said balance the principal sudder ameen decrees with interest, 12 per cent., from date of institution of suit to date of decree, and interest at the same rate from decree to date of realization on the whole sum, together with costs proportionate to the amount decreed, the 26th May 1848.

Appellants plead, first, their right to interest for the rent overdue according to instalments as provided by the respondent's kubooleut disallowed by the principal sudder ameen, because respondent offered to deposit the rent in court, and eventually paid into the collectorate a long period after it was due, and the offer of deposit in the court being a mere subterfuge, as every one knows, the court would not receive rent deposit; and they cite as precedent the case of Kasse Preea decided by the Sudder Dewanny Adawlut, 23rd March 1848.

Secondly. Their right to rupees 817-2-10, deducted from their claim by the principal sudder ameen, because the decree allowing that sum wasilaut was reversed.

Thirdly. Their right to rent for 1240 and 1241, rupees 210-4-1, *minus* collections by purchaser 81-4-12, under precedent, case of Kasse Kant, appellant, decreed by the Sudder Dewanny Adawlut, 24th November 1846.

Fourthly. Their right to rupees 591-14, deducted by the principal sudder ameen, because the respondent was not at liberty to pay to the collector rent due to the appellant. The balance of rent for five years was paid without any account of interest.

The decree of the principal sudder ameen appears decidedly open to amendment:

First. As regards rent for 1240 and 1241, when the principal sudder passed a decision thereon, 13th May 1836, the rent for those years was disallowed on the allegation of the respondent that purchaser Ram Kishen Race was in possession, but subsequently, when the wasilaut was settled, the purchaser was found responsible for rupees 81-4-12, therefore the balance of the rent of those years was due from the respondent. Appellant, therefore, was precluded from obtaining redress at that time by circumstances not under his control, and therefore agreeably to the provisions of Section 14, Regulation III. 1793, appellants are not barred their claim for the balance of rent of 1240 and 1241.

Secondly. Appellants have just right to rent according to the kubooleut of respondent; if he pays money elsewhere, it will not divest the tenant from responsibility to his landlord; such was the relative position of the litigating parties in the matter at issue, although they are uncle and nephews.

3rdly. The decree awarding wasilaut was reversed: respondent is not entitled to the 817-2-10, allowed by the principal sudder ameen under that head.

Fourthly, and lastly, appellants are entitled to interest *kist khilaf* under the terms of kubooleut and according to usage.

The reason assigned by the principal sudder ameen for disallowing interest seems inadequate.

The appeal of appellant, is therefore decreed, and, in amendment of the principal sudder ameen's decision, the full amount claimed by the appellants is decreed. Costs of both courts to be paid by respondent.

THE 8TH MARCH 1850.

No. 16 of 1848.

Appeal from the decision of Syed Abbass Allee, Principal Sudder Ameen of Dacca.

Brijo Chunder Banerjea, for self and guardian of Chunderkaunt and Soorujkaunt, minor sons of Umurkaunt Banerjea, (Plaintiffs),
Appellants,

versus

Kaleekaunt, on his demise, Musst Lukheepreea Debbea, his widow, mother of Brijokaunt and Burdakaunt and Rujunee, minors, (Defendants,) Respondents.

Vakeel of Appellants—Gour Chunder.

Vakeel of Respondents—Lukheekaunt.

SUIT for rent, Sicca rupees 1,363-12-4 = Company's rupees 1,494-11-0½; and interest, Sicca rupees 971-1-14½, total Company's rupees 2,490-8-6.

This is a branch case of appeal No. 17. Kaleekaunt was another uncle of the appellants, and he got, as detailed in that case, one-third share of his father's property under butwara of Joar Dadpore, jumma rupees 139-8-11½; Kaleekaunt had one-third share jumma rupees 66-8-4, and kismut Nuopara jumma rupees 67-0-16-1; of kismut Khiddarpore a howala Bindrabun, jumma 4 annas, one-third share, viz., 1 anna, 6 gundahs, 3 cowrees, total jumma Sicca rupees 113-10-7 per annum, was due to plaintiff, who holds defendants' kubooleut for the same, dated 19th Sawun 1232, agreeing to pay by ten instalments.

Umurkaunt, father of plaintiff, sued the defendants for rent from 1232 to Poos 1240, and obtained a decree, which was confirmed on appeal to the Sudder. Plaintiff now sues for twelve years' rent from Maugh 1241 to Poos 1253, rent Sicca rupees 1,363-12-4, interest Sicca rupees 971-1-14-2, total Sicca rupees 2,334-13-18-2 = Company's rupees 2,490-8-6.

Kaleekaunt answered he had paid into the collector's office :

On the 1st Sawun 1247,	Rs.	121	1	1 $\frac{1}{4}$
„ 10th Maugh 1248,	„	454	0	0
„ 8th Poos 1249,	„	227	8	8
„ 8th Poos 1250,	„	275	10	3
„ 21st Assin 1253,	„	268	11	9
28th Phalgoon,.....	„	121	3	6 $\frac{3}{4}$

Total, Company's rupees,..... 1,468 2 8

nothing was due therefore to plaintiffs, and he was not chargeable with interest.

The principal sudder ameen observed the amount of rent claimed was ...?..... Co.'s Rs. 1,494 11 0 $\frac{1}{2}$
According to a statement from the collector's office he deducted as credited in the collectorate, „ 472 10 1 $\frac{3}{4}$

Balance, ... „ 1,022 0 10 $\frac{3}{4}$

He disallowed interest, on the grounds stated in the former case No. 17, and decreed rupees 1,022-0-10 $\frac{3}{4}$, with interest at 12 per cent. from date of interest at the same rate on the total from date of decree to date of realization, with proportionate costs.

Appellant pleads for the full amount of his rent with interest on the same grounds as in No. 17 case, and for the reasons therein assigned the decision of the principal sudder ameen is open to amendment. The grounds for disallowing interest are not valid, and the respondent must be held responsible for rents under the provisions of his kubooleut, payment into the collectorship of Government revenue, will not dissolve him from his obligation of paying rent and interest due thereon.

The principal sudder ameen's decision is therefore amended, the appeal is decreed, and the full amount claimed by appellant is decreed, and costs of both courts to be paid by respondents.

THE 13TH MARCH 1850.

No. 22 of 1848.

Appeal from the decision of Syed Abbass Allee, Principal Sudder Ameen of Zillah Dacca.

Bindabun Moojnoodar, (Plaintiff,) Appellant,

versus

1, Kishen Chunder Doss, and 2, Junnumjee, (Defendants,) Respondents.

Vakeel of Appellant—Rammunee Bhowe.

Vakeel of Respondent No. 1—Hurree Kishore Raze.

Ditto of ditto No. 2—Gour Chundur Doss.

SUIT to recover damages for libel; rupees 1,600, dismissed by the principal sudder ameen. In appeal, there are no grounds adduced for altering the decision. Had the allegation been proved, it would have amounted only to a term of reproach not actionable. The appeal is dismissed, with costs.

THE 14TH MARCH 1850.

No. 23 of 1849.

Appeal from the decision of Imdad Allee, Moonsiff of Poragacha.

Sheeb Chunder, Chunder Hurree, and Gour Chunder Dutt, (Defendants,) Appellants,

versus

Ram Govind Doss, (Plaintiff,) Respondent.

Vakeel of Appellant—Ameerooddeen.

Vakeel of Respondent—Juggurnath.

SUIT for rent, with interest, rupees 68.

Plaintiff states: In talooqa Radha Madhub Doss, collectorate jumma rupees 108-12-10, held khas by Government, is an ahwala Ramnath Sein, qismut Natesur, comprising 7 kanees 10 cowrees of land, for which plaintiff and Ramguttee engaged to pay the collector rupees 12-15-7½, the 16th September 1840.

From 1244 to 1248 B. S. they paid balances to the collector. In 1849, Tirlochun farmed the talooqa from the collector, consequently they paid the farmer to 1253. A portion of the 7 kanees 10 cowrees of land was in possession of the defendants (now appellants) on a jumma of Sicca rupees 5-4, but they paid nothing: they petitioned to be allowed to pay revenue direct to the collector, this was not admitted: they then sued the plaintiff and collector for settlement on a fixed jumma, and obtained a decree 28th March 1847. The case was appealed: that part of the decree which admitted the fixed jumma was amended, the right admitted for separate settlement was affirmed. Accordingly in 1255 defendants were admitted to separate settlement, and their tenures no longer formed a portion of the plaintiff's pottah elaqu. But rent was due from the defend-

ants from 1244 to 1253, a point indeed admitted in the decree they obtained in the moonsiff's court. Under a butwara or settlement made between plaintiff and Ramguttee of the jumma, Sicca rupees 5-4, or Company's rupees 5-9-7, plaintiff's share is rupees 4-4. Plaintiff therefore sues for 10 years' rent from 1244 to 1253 at 4-4, rupees 42-8, and interest 26-6, total, 68-14.

Defendants answered that, on their separate settlement, plaintiff got a deduction from his jumma, 12-15-7½, of only rupees 3-3-6, which would be the amount of rent claimable by plaintiff, whose lease was dated 1247: thus the amount due for 7 years, from 1247 to 1253, would be rupees 22-8-6. No balances had been paid, as alleged by plaintiff, for the years 1244, 1245, 1246. But plaintiff and Ramguttee had collected from the refts, rupees 31-7-9½, so that there was due from plaintiff to defendants rupees 8-15-3½.

The moonsiff passed judgment to the effect that defendants opposed two objections, one, they never received any orders from the authorities to pay rent to plaintiff, the other that plaintiff had collected rent from the cultivators, but neither of these availed them. From the constituted authorities no order was requisite. Defendants' land was included in the plaintiff's pottah, and, from copies of the chalans and dakhilas under the seal and signature of the collector, it is proved plaintiff paid his jumma from 1244, and defendants do not aver that they paid rent and revenue to the collector or other person. In the suit of separation it was clearly established that plaintiff had paid into the collectorate the full amount, and it was stated plaintiff might recover from defendants, it is proved in that case defendants had possession, on that ground defendants obtained their decree for separate engagements. How then could plaintiff have collected from the refts? One witness of the defendants had presented some dakhilas to prove the fact, but these dakhilas bore not the name nor signature of the plaintiff. The defendants pleaded possession in their former suit, and now contrariwise plead they were not in possession. Defendants object to the butwara between plaintiff and Ramguttee, but that document has been filed and proved, and Ramguttee offers no objection to it. The rate proper to decree against defendants however is rupees 3-3-6, the amount deducted by the collector from the plaintiff's jumma: at that rate, according to the butwara, the plaintiff's share will be 2-7-1, which in 10 years will amount to rupees 24-6-10, and interest thereon 15-1, total rupees 39-7-10, which sum is decreed, with costs, 12-15-2-8, grand total rupees 52-7-8, and interest from date of decree to date of realization against three of the defendants (present appellants,) Ramguttee being exonerated.

The rights of the case seem to have been fully investigated and equitably adjudged. The pleas in appeal afford no grounds for interfering with the moonsiff's decision, which is hereby affirmed. The appeal is dismissed, with costs.

THE 23RD MARCH 1850.

No. 36 of 1850.

Appeal from the decision of Ubhoy Koomar, Moonsiff of Dacca.

Syed Muhsun, (Plaintiff,) Appellant,

versus

Syed Allee Mirza, (Defendant,) Respondent.

Vakeel of Appellant—Mahomed Wasil.

SUIT to recover the price of uttur, &c. &c., rupees 294-4-1½, per khata buhee, including interest.

Dismissed by the moonsiff, 26th December 1849.

Appellant appealed, 17th January 1850, and neglected to proceed in his appeal for six weeks, dismissed under Act XXIX. 1841.

ZILLAH HOOGHLY.

PRESENT: F. W. RUSSELL, ESQ., JUDGE.

THE 14TH MARCH 1850.

Case No 3 of 1849.

Appeal from the decision of Alexander Reid, Esq., Collector of Zillah Hooghly, dated the 12th day of June 1849.

Ranjee Roy and Nobbye Roy, (Defendants,) Appellants,

versus

Lokheemonee Debea, talookdar, (Plaintiff,) and Ramchurn Roy, izaradar, (Defendant,) Respondents.

CLAIM for the possession of nineteen beegahs and twelve cottahs of maul rent-paying land, which the defendants allege to be lakhiraj or rent-free land, calculated at Company's rupees eight hundred and forty-six, annas ten, gundahs sixteen, (Company's rupees 846-10-16.)

From the papers in this case it appears that the appellants, being dissatisfied with the decision of the collector, preferred this appeal, on the 6th day of September 1849: on the 12th day of the same month, September, the appellants were ordered to furnish security for the eventual costs of appeal: on the 19th day of October 1849, agreeably to the petition filed by the appellants, a period of two weeks was allowed to enable the appellants to file their grounds in detail and their reasons for preferring their appeal: on the 2nd day of November 1849, the appellants did so. On the 5th of January 1850 they filed a petition with the usual security bond.

The appellants, having failed to furnish the security ordered on the 12th day of September 1849, filed their oojoothauth, or grounds for appeal, within the period allowed to them on the 19th day of October for so doing, and from which time, that is to say, from the 2nd day of November 1849, a longer period of time than six weeks have elapsed without the appellants either tendering the security or making the usual deposit; moreover, the appellants do not make any mention in the petition filed by them on the 5th day of January 1850, of the reason for the delay which had occurred. Hence I dismiss this appeal, with costs, on default, under the provisions of Act XXIX. of 1841.

THE 14TH MARCH 1850.

Case No. 193 of 1848.

Appeal from the decision of Mohummud Alum, Moonsiff of Ooloberea, dated the 24th day of April 1848.

Oolaus *alias* Sheroollah Mullick, and Sheikh Beychoo Noorbaff, izaradars, (Defendants,) Appellants,

versus

Sheikh Subukootolla, (Plaintiff,) Respondent.

SUIT, for damages sustained from the loss of paddy and straw, calculated at Company's rupees one hundred and forty-eight, (Company's rupees 148.)

The plaint sets forth that the plaintiff having cut the crop of his "boro" paddy, which he had sown in his "nuzoorath" and "lakhiraj" lands, piled them in three separate stacks, consisting of eighteen and a half kawons, with its straw; that the defendants on the 13th day of Bysack 1254 B. S., assembled themselves together with others, and, alleging that one Joomun was the ryot, forcibly had taken and carried away the whole of the aforesaid paddy and straw, they, the defendants, being assisted by a thannah muzkooree peadah, under the provisions of Regulation XX. of 1817, in consequence of which the plaintiff instituted this suit.

The defendants, the izaradars, in their answer, deny the claim of the plaintiff, and state that one Joomun of Joypore holds sixteen beggahs of land within their izarah mohaul, in farm under a lease for two years, that is to say, for the years 1253 and 1254 B. S., at an annual rent of rupces twenty-nine, annas thirteen; that the ryot Joomun having failed to pay the arrears of rent for the year 1253 B. S., they, the defendants, caused the attachment of one kawon and eleven puns of paddy and straw, property belonging to the aforesaid Joomun, under the provisions of Regulation V. of 1812, with the aid and assistance of a muzkooree peadah, agreeable to Regulation XX. of 1817, and the property so seized was subsequently sold through a "forrosh ameen," &c. &c.

The defendant Joomun, in his answer, corroborates the statements of the preceding defendants.

The defendants, Oolaus Mullick Kobraje and Chowdry Mullick Kobraje, distinctly deny the plaintiff's demand.

The moonsiff considered the points to be investigated and ascertained were to discover by whom the paddy and straw had been cultivated and stacked, also what was the intrinsic value of the said property: the moonsiff then, finding the demand of the plaintiff to be just from the evidence adduced by him, the said plaintiff, and that the objections of the defendants were groundless, they, the defendants, not having produced any witnesses to prove the truth of their statement, decreed the case to the extent of rupees one hundred

and twenty-seven, which was the amount proved to be the value of the paddy, &c. in dispute.

The appellants, being dissatisfied with the decision of the moonsiff, filed their petition of appeal on the 29th day of May 1848, stating that they would afterwards file their "oojoothauth" (grounds for appeal,) but in consequence of their having failed to do so for a period exceeding six weeks, the case was dismissed on default, under the provisions of Act XXIX. of 1841, on the 19th day of July 1848.

On the 10th day of August 1848, the appellants filed a petition, under Act XVI. of 1846, stating that, owing to illness they had been unable to file their "oojoothauth" within the limited period, and solicited that evidence of the truth of their statement might be heard, which was accordingly granted, and the aforesaid reason having been subsequently established by the appellants, the appeal was, on the 8th day of December 1849, ordered to be admitted to its former number on the file: on the 8th day of January 1850, the appellants filed their "oojoothauth."

It is urged in appeal that the paddy and the straw in dispute were not, in the first place, the production of the cultivation of the respondent, but that Sheikh Joomun, the ryot of their izara mohaul, had sown the paddy in the sixteen beegahs of land, which he, Joomun, had taken in farm from them, the defendants, who had subsequently attached a portion of the paddy by carrying into force the provisions of Regulation V. of 1812, with the aid of a thannah muzkooree peadah, agreeably to Regulation XX. of 1817; that the paddy and straw were afterwards sold through a furrosh ameen, and purchased by one Kartick Dharrah. The plaintiff declares, in his plaint, that, under the provisions of Regulation XX. of 1817, the paddy and straw had been taken away by the aid of a thannah muzkooree peadah: hence it appears that Regulation V. of 1812, was put in force against the plaintiff; therefore, until the plaintiff institutes a suit for the reversal of the sale against the purchaser, Kartick Dharrah, this action cannot be admitted in a court of justice; that although the witnesses named by the appellants had absconded from the advice and connivance of the respondent, after acknowledging the receipt of the subpoenas which were served on them, still the moonsiff ought to have proceeded against the witnesses in accordance to the provisions of Section 6, Regulation IV. of 1793, &c.

The appellants state the plaint is inadmissible, because the purchaser of the sale effected under Regulation V. of 1812, had not been made a defendant by the respondent; nor is it sought that the sale be reversed. On the perusal of the original plaint it appears that the respondent distinctly states that, in consequence of the appellants not having petitioned the ameen, under Regulation V. of 1812, nor causing the sale of the property, he, the respon-

dent, could not make the purchaser a defendant in the case ; that the appellants had forcibly cut and carried away the paddy and straw. Under these circumstances I do not consider the plaint to be incorrectly drawn. Also the objections of the appellants, that although the witnesses named by them had absconded after acknowledging the receipt of the subpoenas which were served on them, still the moonsiff ought to have proceeded against those witnesses, agreeably to Section 6, Regulation IV. of 1793, I consider to be groundless, because by Construction No. 159, given on the above Regulation, the appellants should have urged (on oath) the necessity of causing the attendance of these witnesses, which they did not do. Hence, under all the circumstances of the case and the reasons recorded by the moonsiff, I consider the moonsiff's decision to be just and sound. I therefore dismiss the appeal, with costs.

THE 14TH MARCH 1850.

Case No. 262 of 1848.

Appeal from the decision of Mr. Alexander Davidson, late ex-officio Moonsiff of Seranpore, dated the 22nd of June 1848.

Mudun Baug Baugdee, (Plaintiff,) Appellant,

versus,

Shagur Baug Baugdee and Bissonauth Mullick Baugdee,
(Defendants,) Respondents.

CLAIM, for the arrears of rent including interest, laid at Company's rupees seven, annas five, gundahs ten, (Company's rupees 7-5-10.)

It appears from the papers that the defendants in this case had taken in farm in the year 1253 B. S., three beegahs of jumma land situated within the village Peearapore, from the plaintiff, under a lease of three years, on an annual rent of rupees six, annas six, gundahs seven, cowrees two, (Company's rupees 6-6-7-2,) that the defendants having paid only rupees five, annas ten, on account of rent for the year 1253 B. S., and nothing for the year 1254 B. S., the plaintiff filed this suit.

The defendants, in their answer, deny having taken the land from the plaintiff under a lease for three years, and they declare the lease was for one year only, that is to say, for the year 1253 B. S., at the rate of six rupees per annum, and which sum they had paid to the plaintiff, and that they had relinquished the land the same year in the month of Chytro, &c.

The plaintiff having failed to prove his demand, the ex-officio moonsiff dismissed the case.

It is urged, in appeal, that, notwithstanding the witnesses adduced by the plaintiff have established the claim of the plaintiff, the moonsiff dismissed the case by stating it to be otherwise, and without

making any enquiry as to the persons by whom the land in question had been cultivated during the year 1254 B. S.

The depositions given by the witnesses for the appellant, in the original suit, do not in the least degree prove his claim to be sound and just: therefore, considering the objections to the decision of the moonsiff to be groundless, and the decision of the moonsiff to be just and proper, I dismiss this appeal, with costs.

THE 14TH MARCH 1850.

Case No. 263 of 1848.

Appeal from the decision of Mohummud Alum, Moonsiff of Ooloberea, dated the 23rd day of June 1848.

Goureechurn Mookerjee, talookdar, for himself as well as guardian of Poornochunder Mookerjee and Oothoolchunder Mookerjee, minor sons of the late Doorgachurn Mookerjee, deceased, (Defendant,) Appellant,

versus

Anundo Pundit, (Plaintiff,) Respondent.

CLAIM, for the reversal of a decision passed under Regulation VII. of 1799, and for a refund of the deposit money, calculated at rupees twenty, annas eight, gundahs eight, (Company's rupees 20-8-8.)

It appears from the papers in this case that the plaintiff had taken in farm sixteen beegahs of the purchased "lakhiraj" (rent-free) bremotter land of Kazim Ali, within the village of Rajapore, under a lease of seven years, at the annual rent of rupees thirty-two, (rupees 32); that the plaintiff holds no "maul" rent-paying land in village chuck Bengalpore *alias* or otherwise called Noya chuck, belonging to the defendant; nevertheless he, the defendant, falsely alleging that the plaintiff had taken in farm ten beegahs and a half of land in the aforesaid village, chuck Bengalpore *alias* or otherwise called Noya chuck, in the year 1253 B. S., under a lease of three years, at an annual rent of rupees twenty-three, annas ten, and that of the rent due for the year 1253 B. S., the plaintiff having paid two rupees only out of rupees fifteen, annas twelve, the defendant talookdar therefore had fraudulently instituted a suit, under the provisions of Regulation VII. of 1709, No. 544, including the ten annas, thirteen gundahs, one cowree, one kraunt share of the two minor sons of the late Doorgachurn Mookerjee, deceased, for rupees fourteen, annas five, gundahs eight, with interest exclusive of rupees seven, annas fourteen, as the amount due to the joint talookdar, Obhoychurn Mookerjee, who has a five annas, six gundahs, two cowrees, and two kraunts share in the aforesaid village; that the case under Regulation VII. of 1799, having been first dismissed by the deputy collector, and subsequently, on the 16th August 1847, decreed by the collector, the plaintiff deposited the sum of rupees

nineteen, annas thirteen, gundahs ten, including costs in the office of the collector, and he then instituted this suit.

The defendant, in his answer, states that the plaintiff formerly held ten beegahs and a half of land in the village called Noya chuck, at an annual rent of rupees ten, annas ten; that subsequently in the year 1252 B. S., the lease having expired and the land becoming fertile, the plaintiff voluntarily enhanced the rent to rupees twenty-three, annas ten, and renewed the lease for three years, that is to say, from the year 1252 B. S.; that of the rent for 1252 B. S., the plaintiff having paid only rupees two, out of the sum of rupees fifteen, annas twelve, and failing to pay the balance, he, the defendant, filed a suit under Regulation VII. of 1799, including the amount due for the shares of the two minor sons of the late Doorgachurn Mookerjee, deceased, and exclusive of the share of the joint talookdar, Obhoychurn Mookerjee, and realized the arrears.

The moonsiff states that the evidence of the witnesses for the plaintiff proves his claim, and that the defendant has failed to make good his objections: besides, had the plaintiff taken in farm the defendant's land, as alleged by him, the other shareholder, who was made a defendant in the original suit, would certainly have also filed his answer in the case, which he, the joint shareholder, did not do: therefore for these reasons the moonsiff decreed the case.

It is urged, in appeal, that the land alluded to by him, the appellant, is to this day in the possession of the respondent, and that the moonsiff, without having caused a local enquiry to be instituted, decided the case; that the documents of the appellant were omitted to be filed in the case, owing to the neglect of his servants, and that the documents are now in his hands; and he solicits that the case be decided after the perusal of those documents and the institution of a local enquiry.

The appellant declares that the respondent is in possession of the alleged land up to this day, but he has not filed any document nor produced any proof, in corroboration of that fact, in the court of the first instance. Under these circumstances, and taking into consideration the reasons recorded by the moonsiff, I consider the decision of the moonsiff, passed on the 23rd day of June 1848, just and correct: therefore I dismiss this appeal, with costs.

THE 14TH MARCH 1850.

Case No. 264 of 1848.

Appeal from the decision of Baboo Doorgapersaud Ghose, Moonsiff of Nyaserai, passed on the 24th day of June 1848.

Kaleepersaud Sornokar and Thakoordoss Sornokar, (Defendants,) Appellants,

versus

Ruttonmonee Debea, widow of the late Kaleepersaud Chatterjee, deceased, (Plaintiff,) Respondent.

SUIT for the possession of a half share of "lakhiraj" land, garden, and tank, and trees, estimated at Company's rupees one hundred and forty-nine, annas eight, (Company's rupees 149-8,) including damages.

It appears from the papers in this case that one Bulram Chatterjee, the father of the deceased husband of the plaintiff, Ruttonmonee Debea, had three sons, the name of the eldest was Govinchunder Chatterjee, the second was named Narayn Chatterjee, and the youngest Kaleepersaud Chatterjee, who was the husband of the plaintiff: these three sons lived together being an undivided Hindoo family: the second son died without issue, and the eldest son, Govinchunder Chatterjee, and the youngest son, Kaleepersaud, continued to reside together, and were in possession of the whole of the property left by their father: subsequently, the eldest son died, leaving one son, by name Sumbhoochunder Chatterjee, who continued to reside with Kaleepersaud Chatterjee, the husband of the plaintiff, both being in possession of the property aforesaid: that Sumbhoochunder died, leaving a son, by name Ramrutton Chatterjee; Kaleepersaud Chatterjee then died, and his widow, the plaintiff, by name Ruttonmonee Debea, and Ramrutton Chatterjee, both held the property respectively in their possession; Ramrutton Chatterjee then died, leaving a widow, Onnopoorna Debea, childless: these two widows continued in the possession of the property aforesaid up to the year 1248 B. S. Onnopoorna Debea died, and the plaintiff held the sole and whole of the property aforesaid: the defendants, Bulram Chowdry and others, having leagued together, then dispossessed the plaintiff of four beegahs of birmutter land in the mouzah Sadhoo Bengallee, ten cottahs of homestead land, and two beegahs and ten cottahs of garden land and tank in the village Roghoonathpore, thus making a total of seven beegahs of "lakhiraj," rent-free land, in consequence of which the plaintiff filed a suit against them, under No. 277, claiming possession of the same, with damages, calculated at Company's rupees 2,065, which case was struck off the file on default: that with the exception of the defendants, Kaleepersaud Sornokar and Thakoordoss Sornokar, the others having admitted, in their answer, in case, No. 277 of being in possession of the property

belonging to Onnopoorua Debea, they are consequently not made defendants in this case ; but as the aforesaid defendants, that is to say, Kaleepersaud Sornokar and Thakoordoss Sornokar, had forcibly, on the 2nd day of Bysack 1249 B. S., dispossessed the plaintiff of the two beegahs and ten cottahs of garden land and tank in the village Roghoonathpore, (alleging themselves to be the proprietors by purchase of the said land and tank,) the plaintiff has therefore sued for possession of a half share of the land in question as the property or share of her late husband, Kaleepersaud Chatterjee, deceased, including damages as laid above.

The defendants, in their answer, contend that the plaintiff had, on the 3rd day of Bhadoon 1239 B. S., sold her half share of the tank in dispute, measuring one beegah and five cottahs, for her maintenance, to the other shareholder, Ramrutton Chatterjee, for the sum of rupees 61, who, that is to say, Ramrutton Chatterjee, sold the same on the 21st day of Maugh 1239 B. S. to the father of the defendants at the same price, from which time, that is to say, from the 21st day of Maugh, the defendants have been in possession of the tank in question ; that on the 14th day of Chytro 1254 B. S. a dacoity occurred in their house, and the bill of sale was lost ; the plaintiff has filed this suit contrary to the one which she had previously instituted ; that the zumeendars, Mudoosoodun Nundee and others, had attached the tank in dispute, believing it to have been "maul," but having subsequently discovered on enquiry that it was "lakhiraj," rent-free, released it from attachment and gave the defendants a "char," dated the 25th day of Assar 1248 B. S. to that effect, which said ("char") document is now in their hands.

The moonsiff states, in his decision, that the defendants declare to their having lost the bill of sale during a dacoity which occurred at their house, but they are unable to prove by witnesses that the plaintiff had sold her share in the tank in dispute to Ramrutton Chatterjee, who again resold the property to the father of the defendants ; moreover, the bill of sale was not registered, it is also surprising that the bill of sale should have been lost and not the char, hence under these circumstances, and with reference to the evidence of the witnesses for the plaintiff, and from the local investigation which the moonsiff made personally, he, the moonsiff, considering the claim of the plaintiff for the possession of the half share of the property in dispute to be proved, and the claim for damages not to be proved, decreed the case.

It is urged, in the appeal, that the respondents had first instituted a suit under No. 277, for possession of seven beegahs of land (out of the whole property,) including damages, calculating at Company's rupees 265, and on that suit being struck off the file, the plaintiff has again instituted this suit contrary to the former one, leaving out the share of Onnopoorua Debea, and claiming possession of her own

half share, which ought to be three beegahs and ten cottahs, and not one beegah and five cottahs, consequently the demand of the plaintiff being divided, the plaint is inadmissible in a court of justice: and that the fact of their (the defendants') having purchased the property in dispute, and their being in the possession of it has been proved by their witnesses; that more than twelve years have elapsed since they had purchased the property, during the whole of which period the plaintiff had not instituted any proceeding, but merely under a plea of having been dispossessed in 1249 B. S., she, the plaintiff, has filed this suit; and that the moonsiff, without taking all the circumstances into his consideration, decreed the case.

After a careful and most attentive perusal of the plaint of the plaintiff in No. 277, and the one filed in this case, it does not appear that the claim of the plaintiff has been undervalued; and after the perusal of the papers in the original nuthee of this case, and the decision passed by the moonsiff, I am unable to find any sound reason on which to disturb the decision passed by the moonsiff of Nyaserai, on the 24th day of June 1848. I therefore dismiss this appeal, with costs.

THE 14TH MARCH 1850.

Case No. 257 of 1848.

Appeal from the decision of Denonath Bose, late Moonsiff of Dwarhatta, dated the 22nd day of June 1848.

Shisteedhur Roy, (Defendant,) Appellant,

versus

Bungseedhur Pundit, (Plaintiff,) Respondent.

SUIT for the recovery of rupees sixteen, annas ten, gundahs nine, (Company's rupees 16-10-9,) advanced on loan, on a bond, including interest.

It appears from the papers in this case that the defendant borrowed from the plaintiff the sum of rupees nine, on a bond, dated the 15th day of Bysack 1250 B. S., and on the failure of the defendant to make a repayment the plaintiff brought an action against him.

The defendant, in his answer, denies the debt, and declares that the plaintiff has sued him from enmity, on the strength of a fabricated document.

The moonsiff states that, owing to the defendant failing to establish the fact of enmity, and the claim of the plaintiff having been proved by the evidence of two witnesses (both of whom are able to read and write,) and the authenticity of the bond filed by the plaintiff: he, the moonsiff, decreed the case.

It is urged, in appeal, that one of the aforesaid witnesses is a "professional" witness, and the other witness is the servant of the plaintiff, and that they, the witnesses, are not residents of the place

where the bond is stated to have been executed; that notwithstanding these facts, the moonsiff has unjustly decided the case against the appellants.

From the bond filed by the respondent in the original suit, and the evidence of the two witnesses to the execution of the deed, both of whom could read and write, the claim of the respondent having been clearly proved, I do not perceive any sound reason on which to disturb the decision passed by the moonsiff, on the 22nd day of June 1848, and therefore dismiss this appeal, with costs.

THE 14TH MARCH 1850.

Case No. 258 of 1848.

Appeal from the decision of Pundit Sreeram Turkolunkar, Head Moonsiff of Hooghly, on the 20th day of June 1848.

Bissumbhur Koowur, Rughoonath Koowur, and Kystochuuder Koowur, (Defendants,) Respondents,

versus

Doorgachurn Dutt, (Plaintiff,) Respondent.

CLAIM, for the balance due for rent, laid at rupees fifty-two, annas nine, gundahs five.

It appears from the papers in this case that, in the village Amerpore, situated within the putnee talook belonging to the plaintiff, there was a "jumma" of rupees eighty-five, annas fifteen, gundahs fifteen, in the name of the late Ramtonoo Koowur, realized through the defendants, who having fallen into arrears, that is to say, to the amount of rupees six, annas six, gundahs fifteen, being the balance for the year 1252 B. S., and the balance for the year 1253, including interest, amounting to rupees forty-two, annas eight, gundahs seven, the plaintiff put into force the provisions of Regulation V. of 1812, for the arrears of 1253 B. S. only, against the defendants, who, according to the said Regulation, complained to the collector and obtained a decree, in consequence of which the plaintiff has instituted this suit for the recovery of the arrears due by the defendants for both of the years, that is to say, for the year 1252 and the year 1253 B. S., with interest, including costs of decree in the collector's court, estimated at rupees one hundred and two, annas nine, gundahs nineteen, (Cp.'s rupees 102-9-19.)

The defendants, in their answer, contend that the former jumma in the aforesaid village was held under two separate "pottahs," leases, for rupees seventy-eight, annas ten, and one gundah in all, that in 1243 B. S., a deduction of rupees two, annas eight, being made from the amount, on account of "chakran" land given in remuneration for past services, the sum of rupees seventy-six, annas two, gundah one, was the fixed jumma; that they had paid the whole of the rent for the year 1252 B. S., as well as rupees fifty-five for the year 1253 B. S., and they obtained receipts only for the sum

of forty-five rupees; that the plaintiff with a view to enhance the jumma has instituted this suit, &c.

The head moonsiff decreed, on the following grounds, the case to the extent of rupees fifty-two, annas nine, gundahs five, being a portion of the amount claimed by the plaintiff, that is to say, although it is written in the "lawazimah papers," village accounts, filed by the plaintiff, that the defendants hold a jumma of rupees eighty-five, annas fifteen, gundahs fifteen, still from a decision under date the 9th ninth day of September 1829, filed by the defendants, it appears that their ancestor, Ramtonoo Koowur, held a jumma of Sicca rupees seventy-eight, annas fifteen, gundas fifteen, or Company's rupees eighty-three, annas thirteen, gundahs ten, and the defendants state that out of that jumma the talookdar allowed them a deduction of rupees two, annas eight, on account of chakran, or land given to defray the expence of collecting the revenue; but the defendants have not filed any document to establish that fact; neither did they produce any witness to prove the truth of their objection, in which they declare they had not received a receipt for ten rupees out of the whole amount which, they say, they had paid on account of the rent due for the year 1253 B. S. Hence, according to the jumma stated in the abovementioned decision, the plaintiff is entitled to the sum of rupees fifty-two, annas nine, gundahs five, that is to say,

	<i>Rs.</i>	<i>As.</i>	<i>Gs.</i>
Balance of rent for the year 1252 B. S.,	3	13	10
Balance of rent for the year 1252 B. S.,	38	13	13
Costs incurred under Regulation V. 1812, ...	3	8	0
On account of interest,	6	6	5
Total,	52	9	5

It is urged, in the appeal, that, owing to the delay which had occasioned in obtaining a copy of the papers, which would prove the fact that the village pykes were in the possession of the said jumma of rupees two, annas eight, for chakran lands, they, the appellants, were unable to file the same in the lower court; there was also a delay of three or four days in depositing the "tullubana" for serving the subpoenas on their several witnesses; and that, on the identical day on which the nazir filed his report, the moonsiff decided the case, and therefore the appellants solicit that proof, by oral and documentary evidence, may be taken from them on the abovementioned two points, and that a local enquiry be instituted previous to the decision of the case.

In order to set at rest the objections offered by the appellants, it is necessary to remand the case for re-trial, and therefore I decree the appeal, and reverse the decision passed by the moonsiff, on the 20th day of June 1848, and order that this case be sent back to the moonsiff, with instructions to restore it to its original number on his

file, and to re-hear the case, and having heard and attended to all the objections offered by the appellants as noticed above, then to decide the case as may seem to him just and proper.

Costs are to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellants.

THE 14TH MARCH 1850.

Case No. 259 of 1848.

Appeal from the decision of Baboo Jugbundoo Banerjee, Moonsiff of Byedbattee, dated the 27th day of June 1848.

Sobhance Mullick, (Defendant,) Appellant,

versus

Muthoormohun Sein, Hullodhur Sein, and Gocoolchunder Sein,
(Plaintiffs,) Respondents.

SUIT for the reversal of a decision passed under Regulation VII. of 1799, and for the recovery of arrears of rent, laid at rupees thirty-six, annas thirteen, gundahs fifteen, (Company's rupees 36-13-15.)

It appears from the papers in this case that the plaintiffs declare themselves to be the talookdars of a two and a half annas share of the village Joggodishpore, within which village the defendant holds eleven keegahs, sixteen cottahs, and nine chittacks of "maul," rent-paying land, on an annual rent of rupees twenty-eight, annas four, gundahs five; that, in consequence of the defendant not having paid the rent for the year 1252 B. S., the plaintiffs instituted a suit, No. 1495, against him, under Regulation VII. of 1799, which was, on the 16th day of November 1846, dismissed by the deputy collector, and therefore the plaintiffs have instituted this suit.

The defendant, in his answer, contends that he holds in farm twelve beegahs, nineteen cottahs, and seven chittacks of land in the aforesaid village, and within the two and a half annas share under seven separate "pottahs," leases, at an annual rent of rupees thirty-one, anna one, gundahs ten; that the plaintiffs, with a view of reducing the quantity of land held in possession by him and of lowering its rent, have instituted this suit; that, out of the rent due for the year 1252 B. S., he has paid to the gomastha of the plaintiffs, the sum of rupees twenty-eight, anna one, gundahs ten; hence only rupees three remain due by him to the plaintiffs; that the above fact having been duly established, the suit under Regulation VII. of 1799, was dismissed.

The moonsiff, on the perusal of the "lawazimah" papers, village accounts, and the reports of the ameen and the sherishtadar of his court, who had been deputed to make the local enquiry, as well as

from the evidence of the witnesses for the plaintiffs, and from the local investigation taken and held by the moonsiff himself in person, considering the claim of the plaintiffs just and valid, decreed the case.

It is urged, in the appeal, that the fact of the appellant having paid the rupees twenty-eight, anna one, gundahs ten, as part of the payment for the rent of the year 1252 B. S., was clearly proved by his witnesses, that the "lawazimah" papers filed by the plaintiffs were not duly attested according to practice, that the ameen and the sherishtadar filed their reports after leaguings with each other, and that the moonsiff, in the local investigation made by himself, omitted or neglected to take the depositions of the witnesses on oath, and therefore the decision of the moonsiff had been formed on conjecture.

The moonsiff personally made the local investigation, and for the reasons recorded by him in his decision, I consider his decree to be just and sound, hence I dismiss this appeal.

The respondents having appeared unsummoned, the costs of this court are to be paid by each party respectively.

THE 14TH MARCH 1850.

Case No. 271 of 1848.

Appeal from the decision of Denonath Bose, late Moonsiff of Dwarhatta, dated the 6th day of July 1848.

Doorgapersaud Chuckerbuttee, (Plaintiff,) Appellant,

versus

Ramlochun Chuckerbuttee, (Defendant,) Respondent.

SUIT for the recovery of a sum of money, amounting to rupees thirty-one, annas thirteen, gundahs four, advanced on loan on a bond including interest.

The plaintiff sues the defendant for the sum of rupees twenty-five, principal money, which the defendant had taken on loan on a bond dated the 25th day of Maugh 1250 B. S., and for rupees six, annas thirteen, gundahs four, on account of the interest accruing thereupon, after deducting the sum of four rupees, which the defendant had already paid on account of the interest, making a total of rupees thirty-one, annas thirteen, gundahs four.

The defendant, in his answer, denies the debt *in toto*, and avers that the plaintiff has sued him from enmity, on the strength of a fabricated bond, and that he, the defendant, is a mokhtear by profession, and the fact whether he was at Hooghly or not, on the date of the face of the bond can be proved, as well as on the days prior to and subsequent to the execution of it, on an enquiry being instituted.

The moonsiff referred the case to arbitrators, by name, Judoonath Singh Roy and Behareeloll Singh Roy, (both being residents of the village Bahirgorah,) with the consent of both the parties: that from

the report of the arbitrators it having appeared that the demand of the plaintiff was unjust, the moonsiff dismissed the case.

It is urged, in appeal, that, owing to the arbitrators being guilty of partiality, and not acting conscientiously, the appellant represented to the moonsiff, by petition, his unwillingness to admit the individuals above named, that is to say, Judoonath Singh Roy and Behareeloll Singh Roy, as the arbitrators, and that the moonsiff, without calling for any proof from the appellant to the truth of the above fact, dismissed the case.

The appellant having filed a petition in the lower court, complaining of the partiality of the arbitrators, the moonsiff ought to have called upon the appellant to prove the truth of his averment agreeably to the provisions of Section 9, Regulation XVI. of 1793. The moonsiff having neglected to do so, his decision is therefore illegal, therefore I decree the appeal, and reverse the decision passed by the moonsiff on the 6th day of July 1848, and order that the case be remanded to the moonsiff for re-trial, with instructions to restore it to its original number on his file, and having attended to the remarks noticed in this decree to re-try the case.

Costs for the present to be paid by each party respectively, and ultimately by the losing party,

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 14TH MARCH 1850.

Case No. 268 of 1848.

*Appeal from the decision of Muhummud Yâhsannul Ghunnee,
Moonsiff of Jahanabad, dated the 26th day of June 1848.*

Khonshee Khan, (Defendant,) Appellant,

versus

Tarachand Chuckerbuttee, (Plaintiff,) Respondent.

SUIT for the recovery of the sum of rupees fifty-nine, annas three, gundahs eighteen, cowrees two, being the amount of a sum of money advanced on loan on a bond, including interest, (Company's rupees 59-3-18-2.)

It appears from the papers in this case that the defendant borrowed the sum of rupees forty-one from the plaintiff, under a bond dated the 29th day of Chyet 1252 B. S. ; on the failure of repayment, the plaintiff filed an action for rupees forty-seven, annas ten, gundahs one, which includes the interest against the defendant.

The defendant, in his answer, admits the debt, but declares he had paid to the plaintiff the sum of rupees thirty-eight, on the 25th day of Kartick 1253 B. S., and a further sum of rupees fourteen, annas eight, including interest, on the 20th day of Chyet 1253

B. S., and that he, the defendant, received back his original bond; that the plaintiff with the view to get the amount of his bond paid over twice, has instituted this suit, on the strength of a fabricated instrument.

The moonsiff decreed the case, on the grounds that the witnesses to the bond filed by the plaintiff, being able to read and write, prove the correctness of the demand of the plaintiff, as well as the authenticity of the bond or document filed by the plaintiff; whereas the two witnesses to the bond filed by the defendant, and which document he, the defendant, declared he had received from the plaintiff, being persons of low cast and so illiterate as not to be able to read or write, and owing to the many discrepancies in their deposition, the authenticity of the document filed by the defendant could not be proved.

It is urged, in appeal, that, although the statement of the defendant had been proved by his witnesses, the moonsiff has unjustly decided the case against him, and that the witnesses named by the parties, that is to say, Joodhistear Roy, the writer of the bonds of both parties, the respondent did not produce though directed to do so, and therefore the appellant solicits that the aforesaid individual be summoned to the appellate court prior to the disposal of the case.

After a most careful and attentive perusal of all the papers in this case and in the original suit, the authenticity of the bond filed by the respondent, as well as the demand of the plaintiff, has been clearly established and proved by witnesses, who can both read and write, produced by the respondent, while the two witnesses produced by the appellant are not able to read or write, and no dependance can be placed on their evidence from the numerous discrepancies in their depositions. I consider the decision of the moonsiff just and sound, therefore dismiss this appeal.

The respondent having appeared unsummoned, costs are to be paid by each party respectively.

THE 21ST MARCH 1850.

Case No. 283 of 1848.

Appeal from the decision of Baboo Jugbundoo Banerjee, Moonsiff of Byedbattee, dated the 19th day of July 1848.

Bhoyrubchunder Manjee, (Defendant,) Appellant,

versus

Mudoosoodun Mannah, (Plaintiff,) Respondent.

SUIT for the balance of certain accounts, including interest, laid at Company's rupees seventy-nine, annas eleven, gundahs nine, (Company's rupees 79-11-9.)

The plaint sets forth that, on the settlement of certain accounts, a balance appeared of rupees forty-two, annas nine, gundahs twelve,

cowrees two, which was struck against the defendant on account of certain dealings in silk, which dealings the defendant had had with the plaintiff, since the 30th day of Bysack 1245 B. S., to the 25th day of Chyet 1247 B. S. The defendant having failed to pay the amount, the plaintiff has in consequence instituted this suit, that is to say, for the sum of forty-two rupees, nine annas, twelve gundahs, two cowrees, as principal money, and for the sum of rupees thirty-six, anna one, gundahs seven, cowrees two, interest accruing, making a total sum of rupees seventy-eight, annas eleven.

The defendant denies the demand, and states that he and his brother had, on the 18th day of Srabun 1250, borrowed the sum of rupees twenty-five from the plaintiff, which amount he had subsequently liquidated; that owing to the plaintiff not having restored the bond on which the aforesaid twenty-five rupees had been borrowed, he, the defendant, instituted a suit for its restoration under No. 40, and he, the defendant, obtained a decree that the plaintiff has from enmity instituted this action.

The moonsiff decreed the case for the following reasons recorded in his decision, that from the evidence of the witnesses for the plaintiff and the "khata-buhee," account-book, filed by him, it is evident that the defendant is indebted to the plaintiff the balance struck and entered in the book, on the total of which the defendant affixed his signature in the presence of witnesses, and although the defendant contends he had instituted a suit against the plaintiff under No. 40, for the return of the bond, dated the 18th day of Srabun 1250 B. S., and obtained a decree, filing at the same time a copy of the same, stating that if there had actually been a balance against him in 1247 B. S., it is not probable that the plaintiff would again advance to him a loan in 1250 B. S., thus denying the plaintiff's claim for 1247 B. S., but on the perusal of that decision, the plaintiff's book of account cannot be set aside, on the contrary it would appear that the defendant, with a view of depriving the plaintiff of his right, had anticipated him by the suit No. 40, &c.

It is urged, in appeal, that the authenticity of the "khata-buhee" filed by the plaintiff was not proved by the person who had written the same, and that the moonsiff, having previously rejected the evidence of the witnesses for the plaintiff, No. 1, Ramsoonder Bythaul, and No. 2, Bishonath Jannah, before the ameen deputed to make the local enquiry in the case No. 40, decreed that case, and whose evidence the moonsiff has admitted in this case, and the moonsiff now endeavouring to find fault with his own decision No. 40, is manifestly unjust, &c.

After a careful perusal of all the papers in this case, I do not consider the demand of the plaintiff proved, nor the decision of the moonsiff just and sound for the following reasons:

First. The authenticity of the "khata-buhee," account-book, filed by the plaintiff in the court of first instance, had not been

attested by the person who had written the same, although the plaintiff has produced two witnesses, Ramsoonder Bythaul No. 1, and Bishonath Jannah No. 2, as these two individuals had given their depositions before the ameen deputed to make the local enquiry in the case preferred by the appellant, under No. 40, in favor of the respondents, and the moonsiff having rejected their evidence and decreed that case, and the moonsiff having subsequently admitted the evidence of those identical persons in this case, and having decreed the case on the strength of an unauthenticated "khata-buhee," account-book, his decision is manifestly unjust.

Secondly. The moonsiff declares in his decision "that the copy of the decision in case No. 40 filed by the defendant, does not render the khata-buhee filed by the plaintiff inadmissible, rather it appears that the defendant, with a view to deprive the plaintiff of his right, anticipated him by the suit No. 40, which is also an injustice on the part of the moonsiff, because he having considered the claim of the appellant in case No. 40, just, and fully proved, decreed it: and subsequently to endeavour in this case to find a flaw with that decision, is beyond his competency.

Thirdly. After the admission of this appeal, the respondent filed two "jath firds," one dated the 7th day of Bhadoon 1247 B. S., and the other dated the 2nd day of Phalgun 1247 B. S., alleging that they bear the signature of the gomashta of the village, and purporting to be for the rents paid by the respondent on behalf of the appellant to the said gomashta, also three lists of witnesses in which are the names of Modhoosoodun Sawunt, Govind Doss bearer, and Kautho Moytee, and caused their depositions to be given and two "khata-buhee," account-books, for the years 1245 B. S. and 1247 B. S., which he, the respondent, received back from the moonsiff's court; but, in my opinion, the said jath firds and khata-buhee are inadmissible, and the evidence of the witnesses unworthy of credence, because the respondent declares to have commenced dealings in silk with the appellant in the year 1245 B. S., and demands balance of account settled in the year 1247 B. S., and he produced the account books for those two years, he has failed to produce the account book for the year 1246 B. S., which would exhibit the actual balance brought forward in the year 1247 B. S., particularly on comparing the signature of the appellant written on the two aforesaid khata-buhees, with his signature to the wukalutnamah filed by him in this case, the signatures to the khata-buhees is altogether in different writing from that to the wukalutnamah; moreover, at the end of the balance struck in the account-book for 1245, the name of Bhoyrub Manjee only is written and not any of the witnesses, nor that of the debtor on the right hand side of the page; that under the last balance struck in the account-book for 1247 B. S., the name of Bhoyrub Chunder Manjee is written, and those of the witnesses and that of the debtor are written on the right

hand side of the page; hence it is evident that the names of the witnesses, Ramsoonder Bythaul and Bishonath Jannah, were subsequently inserted, exclusive of which the writer of the account-book, Gooroodoss Berah, distinctly states, in his deposition, that the appellant did not, in his presence, compare and settle the accounts, nor did he affix his signature under the balance struck in the account-book of 1247 B. S., consequently such an account-book cannot be admitted in a court of justice. Further, it was absolutely necessary for the respondent to have proved the fact of his having paid the rent to the gomashtha at the request of the appellant, according to the purport of the jath firds, which respondent has not done. Though the witnesses, Mudoosoodun Sawunt and Kantho Mytee, state that the respondent paid rent to the gomashtha on the part of the appellant, that is to say, eight rupees in Bhadoon 1247, and ten rupees in Phalagoon of the same year, still the witness, Mudoosoodun Sawunt, declares that the respondent brought money from his house and paid it to the gomashtha, whereas the witness, Kanto Mytee, states that the respondent paid the money on both occasions to the appellant who then paid it to the gomashtha: hence, owing to the discrepancies in the evidence of these witnesses in relation to the money transaction, and as it appears from the depositions of the two aforesaid witnesses that they have on several occasions given their evidence in other suits, no dependance can be placed on their testimony. Under all these circumstances I decree the appeal, and reverse the decision of the moonsiff, passed on the 19th day of July 1848. Costs of both courts to the paid by the respondent, and I order that an explanation be called for from the moonsiff on the two first points.

THE 21ST MARCH 1850.

Case No. 277 of 1848.

Appeal from the decision of Baboo Nobeenchunder Mitter, Moonsiff of Rajapore, dated the 19th day of July 1848.

Joykisto Mookerjee and Rajkisto Mookerjee, (Defendants,) Appellants,

versus

Rammohun Gullooe, (Plaintiff,) and Ramchunder Chatterjee, (Defendant,) Respondents.

CLAIM, for the reversal of a summary award connected with Regulation V. of 1812, and to recover the value of a boat, laid at Company's rupees sixty-three, annas six, gundahs eight, caugs fourteen and a half.

The plaintiff sets forth that the plaintiff has no interest whatever in any maul, rent-paying land, in the village Khas Rooddrapore, per-

gunnah Balcah, belonging to the zumeendars, Joykisto Mookerjee and Rajkisto Mookerjee, but that he holds resumed rent-free land within the aforesaid village, the property of Sheikh Abdool Jubbur and Mussamut Syedoonnissa Beebee, notwithstanding which the ijaradar, Rughoonath Ghose, and Goluckchunder Biswas, the gomashita of the zumeendars, alleging from enmity that the plaintiff holds twenty beegahs and sixteen cottahs of every description of land in the village Khas Rooddrapore, out of which six beegahs and eighteen and half cottahs are of resumed "lakhiraj," rent-free land, and that for the remainder fourteen beegahs and one cottah, the plaintiff pays a rent of Company's rupees thirty-three, annas eight, gundahs eighteen, caugs fourteen and a half, and failing to pay the rent due from Assar to Chyetro 1251 B. S., which rent amounts to rupees thirty-six, annas nine, gundahs eighteen, caugs fourteen and a half, including interest, the two aforesaid individuals enforced the provisions of Regulation V. of 1812, against the plaintiff, and filed a petition No. 99, to the ameen at Howrah in zillah 24-Pergunnahs, and secretly caused the issue of a proclamation of sale, which was advertised to take place on the 18th day of July 1845: moreover the plaintiff deposited a sum of rupees forty-four, annas four, gundahs eight, caugs fourteen and a half, on the day on which the ameen went to the spot to effect the sale, and they, the defendants, carried off a large boat, "hola," under the pretence of its having been sold by the ameen, in consequence of which the plaintiff instituted this suit.

The defendants, Joykisto Mookerjee and Rajkisto Mookerjee, Ramchunder Chatterjee, and Roghonath Ghose, in their answer, state that the plaintiff had, on the 15th day of Kartick, in the year 1244 B. S., given a "kubooleut," or counterpart of lease, to the gomashita of the former zumeendar, for twenty beegahs, sixteen and half cottahs of "maul," rent-paying land within the village of Khas Rooddrapore, at an annual rent of rupees forty, annas ten, gundahs seventeen; that, agreeably to Regulation II. of 1819, six beegahs and fifteen and half cottahs having subsequently been resumed, the rent was reduced to rupees thirty-three, annas eight, gundahs eighteen, caugs fourteen and a half, as well as the land to fourteen beegahs and one cottah, which rent the plaintiff has regularly continued to pay, and this fact will be proved on the perusal of the "lawazimah," village papers; that owing to the plaintiff not having paid the rent due for the year 1251 B. S., that is to say, rupees thirty-six, annas nine, gundahs eighteen, caugs fourteen and a half, they issued a notice under Regulation V. of 1812, and caused the attachment of the property of the plaintiff, and the deposit made by the plaintiff satisfied the demand of the defendants, including the costs; that the assertion made by the plaintiff, that a large boat had been taken away, is false, because no sale was effected, &c.

The moonsiff states the points for adjudication are, first, whether the plaintiff holds in farm any "maul," rent-paying land, or not?

Secondly. Whether the demand of the gomashta of the zumeendar was applicable under the provisions of Regulation V. of 1812, or not?

Thirdly. Has the plaintiff found the attached "hola," boat?

From the evidence of the two witnesses for the plaintiff, and on the perusal of a copy of the "chittah" given to the plaintiff, under Regulation II. of 1819, and the map filed by the defendants, exhibiting the boundaries of the land, also from the ameen's report, &c., it is clearly proved that the plaintiff does not hold in farm any "maul" land, belonging to the defendants; but he holds resumed rent-free land, the property of Sheikh Abdool Jubbur and Syedoonnissa Beebee, and that the defendants, alleging the resumed lands and those farmed by other persons to be *the* "maul," rent-paying land, farmed by the plaintiff, have filed a map, exhibiting the boundaries, in which map the divisions of the land have been altered: from the copy of the petition, dated the 16th day of Joistee 1243 B. S., filed by the plaintiff, it appears that the plaintiff had previously held eight beegahs and seventeen cottahs of "maul" land in the village in question, out of which he now holds two and quarter beegahs, as homestead, which has since been included among the resumption lands, and the remainder he resigned: that from the appearance of the "kubooleut," filed by the defendants, said to have been given by the plaintiff, it seems to be a fabricated document: further from the nuthee of the papers of the case of the boat, "hola," attached under Regulation V. of 1812, it does not appear to have been released from attachment or been delivered to the plaintiff: and that the copy of the fysalla No. 2500, filed by the defendants, cannot be considered as a document fixing the rent of the land in future years: therefore, the moonsiff decreed the case against the zumeendars and ijaradar.

It is urged, in appeal, that the respondent claims the refund of the deposit money, which he deposited under the provisions of Regulation V. of 1812, and to recover the value of the "hola," boat: hence it was requisite that the moonsiff should have decided the case as to whether the demand was applicable under Regulation V. of 1812? and whether the respondent had received the boat in question? Moreover it is urged in the appeal that the moonsiff, besides these two points, decided the point as to whether the plaintiff held any maul, rent-paying land or not, without the usual rusoom, stamp fees being paid on the part of the respondent, which is illegal on his (the moonsiff's) part: that from the kubooleut given by the respondent, and filed by them, the appellants, and from the evidence of the witnesses, whose names are affixed to that document, as well as from the lawazimah, village

papers, and from the final decree No. 2500, given under Regulation VII. of 1799, during the incumbency of the former zumeendar, on the report of two ameens, who had been deputed to make the local enquiries, the fact of the respondent having farmed the maul land belonging to the appellants, and continuing regularly to pay the rent of it, has been proved: that the (documents) dakhilas filed by the respondent are fabricated instruments, for their authenticity has not been proved by the moonsiff, neither did the moonsiff make any enquiry as to their being genuine or otherwise: besides, the two witnesses alluded to by the moonsiff being of low caste and being professional witnesses, no dependance can be placed on their evidence: also the report of the last ameen cannot be considered of any weight or importance, as he, the ameen, had leagued with the opposite party: further, the statement of the respondent regarding his having resigned all the lands excepting two and a quarter beegahs, out of the parcel of eight beegahs and seventeen cottahs, and filing a copy of a petition to that effect, which he alleges to have filed on a former occasion, is altogether false; for the petition was never admitted by any public officer, on the contrary, it would appear that the respondent has made the assertion with a view of possessing maul, rent-paying land as lakhiraj, after having leagued with Syedoonnissa Beebee and others, &c., and that the respondent having made the deposit, his property was not sold; and had the respondent not found the hola, boat, he would most certainly have mentioned the circumstance, by petition, either to the ameen or to the collector; from his not having done so, it is clear that the assertion is false.

After an attentive perusal of all the papers in the original case, the claim of the respondent appears clearly proved; and the principal document filed by the appellants, that is to say, the kubooleut alleged to have been given to them by the respondent, on the 15th day of Kartick 1244 B. S., appears doubtful as to its authenticity. Moreover, to the question put by this court to the vakeel for the appellants, on the 29th day of January 1850, as to how the kubooleut given during the incumbency of the former zumeendar, came into the hands of his client, the vakeel replied that the particulars *may have been stated* in the answer filed in the original suit; but on the perusal of that document, this point is not alluded to in it. The plea of the appellants that the moonsiff decided the point as to whether the plaintiff held any maul, rent-paying land, or not, without the usual rusoom, or stamp fees having been paid on the part of the respondent, being illegal, is contrary to Construction No. 862, because in suits to obtain a reversal of a summary decision, passed under Regulation V. of 1812, the value of the suit should be estimated at the amount of rent in dispute, or in other terms at the sum sued for in the first instance. Under these circumstances, and on the grounds recorded by the moonsiff, I consider the

decision passed by the moonsiff, on the 19th day of July 1848, just and sound, therefore I dismiss this appeal.

Costs to be paid by each party respectively, as the respondents appeared unsummoned.

THE 21ST MARCH 1850.

Case No. 282 of 1848.

Appeal from the decision of Baboo Doorgapersad Ghose, Moonsiff of Nyaserai, dated the 14th day of July 1848.

Horishchunder Banerjee. Talookdar, (Plaintiff,) Appellant,
versus

Srcceram Biswas and Doyamonee Dasse, (Defendants,) Respondents.

CLAIM, for the establishment of the rate of rent on twenty-four beegahs, sixteen cottahs, and ten chittacks of land, calculated at rupees eighty-five, annas nine, gundah one, (Company's rupees 85-9-1.)

It is set forth in the plaint that the plaintiff purchased lot Russoolpore, which was sold by public auction at the last six-months sale for the year 1251 B. S.; that on being put in possession of the property he found on enquiry that the defendants hold twenty-four beegahs, sixteen cottahs, and ten chittacks of every description of land, under their own and in other fictitious names, in the village Basdebbhattee, at a very low rent, which, according to the established rate of the village, amounted to rupees eighty-nine, annas nine, gundah one; that agreeably to Regulation V. of 1812, the plaintiff issued a notification on the 2nd day of Bysack 1254 B. S., requesting the defendants to attend within fifteen days for the purpose of taking a pottah, lease, and giving the kubooleut, counterpart of the lease, for the rent; notwithstanding which the defendants did not agree to the rent of the aforesaid land held by them, neither did they take a lease to that effect, nor did they give any kubooleut; in consequence of which the plaintiff instituted this suit.

The defendants, in their answer, contend that the land in question has been successively held from generation to generation in their family, at the rent of Sicca rupees eighteen and annas five, which was the rate of rent which their ancestors had paid regularly, and after the death of those ancestors the defendants continued to pay Company's rupees nineteen, annas eight, gundahs ten, cowrees two, and kraunts two, and had obtained receipts for the same; that they, the defendants, also are in possession of receipts for rent paid in the years 1115 B. S., 1189 B. S., 1190 B. S., 1191 B. S., 1192 B. S., 1193 B. S., and 1198 B. S., seven receipts in all, also receipts from the year 1201 B. S. to 1254 B. S.; hence no other rate can be fixed on such land for rent, &c.

The claimant, Issurchunder Roy, preferred his claim to a portion of the land, declared in the plaint to be farmed by the defendants, as his dewuttur land, owing to its being included in the taidaud No. 58290, filed by his late father, and which was subsequently resumed.

The moonsiff decreed the case, on the grounds that, from the appearance of the two pottahs, that is to say, for the years 1115 B. S. and 1173 B. S., and the dakhilas, the receipts, up to the year 1194, filed by the defendants, evidently seem to be fabricated documents; and the amount of rent stated in those dakhilas, documents for the years 1212 B. S., 1214 B. S., and 1216 B. S., do not correspond with each other, therefore the actual amount of rent cannot be ascertained, hence a fixed rate of rent can be legally established on the said lands of which the defendants hold possession; and from the measurement made by the ameen, it appears that out of the aforesaid land eight beegahs, eighteen cottahs, fifteen chittacks, fifteen gundahs, and one cowree is now under investigation in the resumption department, and the rent of the remainder, amounting to fifteen beegahs, nineteen cottahs, five chittacks, one gundah, and three cowrees, bear rent at Company's rupees forty-two, annas six, gundas fourteen, cowree one, at which rate the defendants are ordered to pay the plaintiff, from the year 1254.

It is urged, in appeal, that the respondents, having leagued with the claimant, induced him to prefer his claim to the said eight beegahs, eighteen cottahs, fifteen chittacks, fifteen gundahs, and one cowree land included in the measurement made by the ameen, as his dewuttur land, which it is not; and the moonsiff without enquiry excluded that portion of the land from the rest of it; and that the moonsiff, instead of fixing the rate of the rent reported by the ameen, fixed a rate of his own calculation on conjecture, and decreed the case contrary to custom by asserting the rent to be in Company's rupees instead of in Sicca rupees; and therefore the appellant solicits that the rate reported by the ameen may be established on the whole of the land measured by the ameen, that is to say, on twenty-four beegahs, eighteen cottahs, four chittacks, and seventeen gundahs.

The appellant claims the establishment of a rate of rent on the land, to which the claimant has preferred his claim, without having included him as a respondent in this case, and until his name is included in the appeal, the point regarding the objection to the land preferred by the claimant cannot be decided. Under these circumstances, and with reference to the grounds recorded by the moonsiff, I consider the decision passed by the moonsiff just and sound, therefore I dismiss this appeal, with costs.

THE 21ST MARCH 1850.

Case No 286 of 1848.

Appeal from the decision of Baboo Doorgapersaud Ghose, Moonsiff of Nyaserai, passed on the 14th day of July 1848.

Ramcoomar Biswas and Doymooee Dassee, (Defendants,) Appellants,
versus

Horishchunder Banerjee, Talookdar, (Plaintiff,) Respondent.

CLAIM, for the establishment of a rate of rent on twenty-four beegahs, sixteen cottahs, and ten chittacks of land, calculated at rupees forty-two, annas six; gundahs fourteen, cowree one, (Company's rupees 42-6-14-1.)

It is set forth in the plaint that the plaintiff purchased lot Russoolpore, which was sold by public auction at the last sixmonths' sale for the year 1251 B. S.; that, on being put in possession of the property, he found on enquiry that the defendants held twenty-four beegahs, sixteen cottahs, and ten chittacks of every description of land, under their own and in other fictitious names, in the village Basdebbattee, at a low rent, which, according to the established rate of that village, amounted to rupees eighty-five, annas nine, gundah one; that, agreeably to Regulation V. of 1812, the plaintiff issued a notification on the 2nd day of Bysack 1254 B. S., requesting the defendants to attend within fifteen days for the purpose of taking a pottah, lease, and giving their kubooleut, counterpart of the lease, for the rent, notwithstanding which the defendants did not fix the rent of the aforesaid land held by them, neither did they take a lease to that effect, nor did they give any kubooleut, in consequence of which the plaintiff instituted this suit.

The defendants, in their answer, contend that the rent of the land in question, which land has been successively held by his family from generation to generation, and at the rate of Sicca rupees eighteen and annas five; that their ancestors had regularly paid their rent at that rate, and after their death the defendants continued to pay Company's rupees nineteen, annas eight, gundahs ten, cowrees two, and kraunts two, and had obtained receipts for the same; that they are also in possession of receipts for rent paid in the years 1115 B. S., 1189 B. S., 1190 B. S., 1191 B. S., 1192 B. S., and for 1198 B. S., seven receipts in all, as well as for those years from the year 1201 B. S. to 1254 B. S., hence no other rate can be fixed on such land and for the rent of it, &c.

The claimant, Issurchunder Roy, preferred his claim to a portion of the land, declared in the plaint to be farmed by the defendants, as his dewutter land, in consequence of its being included in the taidand No. 58290, filed by his late father, and which land was subsequently resumed.

The moonsiff decreed the case, on the grounds that from the appearance of the two pottahs, that is to say, for the years 1115 B. S. and 1173 B. S., also the dakhilas, receipts, up to the year 1194 B. S., filed by the defendants, these papers evidently seem to have been fabricated; and the amount of rent inserted in the dakhilas for the years 1212 B. S., 1214 B. S., and for the year 1216 B. S., do not correspond with each other, and therefore the actual amount of rent cannot be ascertained, hence a fixed rate of rent can be legally established on the land of which the defendants hold possession; and from the measurements made by the ameen, it appears that out of the aforesaid land eight beegahs eighteen cottahs, fifteen chittacks, fifteen gundahs, and one cowree, is now pending investigation in the resumption department, and the rent of the remainder, that is to say, the fifteen beegahs, nineteen cottahs, five chittacks, one gundah, and three cowrees, amount to Company's rupees forty-two, annas six, gundahs fourteen, cowree one, at which rate the defendants are ordered to pay the plaintiff from the year 1254 B. S.

It is urged, in the appeal, that the moonsiff had, merely on conjecture, unjustly considered the pottahs and the receipts filed by them to be fabricated documents, and ordered the establishment of a fixed rent on the land which they and their ancestors held under a perpetual lease, &c.

Both parties being dissatisfied with the decision passed by the moonsiff, the plaintiff preferred an appeal under No. 282, and the defendants also preferred this appeal, which, together with that of No. 282, have this day been brought forward together; and, considering the decision of the moonsiff in the case No. 282, to be just and sound, that appeal was dismissed, and in this case also I am unable to find any good reason on which to disturb the decision passed by the moonsiff, on the 14th day of July 1848: therefore I dismiss this appeal, with costs to be paid by each party, respectively, as the respondent appeared unsummoned.

THE 21ST MARCH 1850.

Case No. 281 of 1848.

Appeal from the decision of Baboo Jugobundoo Banerjee, Moonsiff of Byedbattee, passed on the 12th day of July 1848.

Ranee Keyteeanee, (Plaintiff,) Appellant,

versus

Kobeelchunder Chuckerbuttee, (Defendant,) Respondent.

SUIT for the reversal of a decision passed under Regulation VII., 1799, and for the realization of arrears of rent, laid at rupees twelve, annas twelve, gundahs fifteen, (rupees 12-12-15.)

It appears from the papers in this case that the defendant holds three beegahs, two cottahs, and two chittacks of land in the village Kamar Koondoo, situated within the talook lot Jugodishpore, belonging to the plaintiff, at an annual rent of rupees ten, annas fourteen, gundahs six, cowree one, (Company's rupees 10-14-6-1,) that the defendant having failed to pay the rent due for the year 1253 B. S., the plaintiff filed a suit No. 797, under Regulation VII., 1799, for rupees eleven, annas ten, gundahs seven, (Company's rupees 11-10-7,) including interest, and in consequence of the deputy collector having, on the 11th day of July 1847, dismissed the case, the plaintiff has instituted this suit.

The defendant, in his answer, states that he holds two beegahs and fifteen cottahs, of putteet khamar, land under a lease given by Pursunnocoomar Singh, dated the 3rd day of Bysack 1242 B. S., who was the gomashita of the former zumeendar, on an annual rent of Sicca rupees five; that in 1253 B. S. he had duly paid five rupees, being the amount of rent for that year, 1253, to the gomashita of the plaintiff, and obtained a receipt for the same, notwithstanding the plaintiff sued him, the defendant, from enmity, under Regulation VII., 1799, which suit was dismissed, &c.

The plaintiff, in his replication, declares that, in the first place, Pursunnocoomar Singh was not the gomashita on the 3rd day of Bysack 1242 B. S., he having been appointed gomashita on the 21st day of Bhadoon 1242 B. S., previous to which date Issurchunder Ghose and the late Pancharam Sircar, since deceased, were the gomashitas, hence the pottah alluded to by the defendant cannot possibly be genuine.

The moonsiff dismissed the case on the following grounds, that is to say, in the case instituted under Regulation VII., 1799, no other papers except the lawazimah, village accounts, for the year 1251 B. S.; were filed by the plaintiff, but in this case the lawazimah papers of the two following years having been filed by the plaintiff, it must be supposed they were subsequently prepared: moreover, in consequence of the many discrepancies in the evidence given by the witnesses for the plaintiff, no dependance can be placed on their testimony; under all the circumstances of the case it would appear that the plaintiff had on several occasions preferred suits under Regulation VII., 1799, against the defendant, from enmity.

The moonsiff states, in his decision, that the witnesses for the plaintiff do not know on what year and date the defendant received the pottah, lease, from the gomashita of the former proprietor, besides the witnesses do not agree in the name of the gomashita at that time, therefore no dependance can be placed on their testimony: the plaintiff, in his replication, avers that, on the date of the pottah, Pursunnocoomar Singh was not the gomashita, for he was not appointed to be the gomashita until the 21st day of Bhadoon 1242 B. S., previous to which date the late Panchanun Sircar, deceased,

and Issurchunder Ghose, were the gomashas: hence it was necessary for the moonsiff to have instituted an enquiry into the truth of that important point. The moonsiff, having omitted or neglected to do so, leaves the point unsettled, and his decision incomplete. Therefore, I decree this appeal, and reverse the decision passed by the moonsiff, on the 12th day of July 1848, and order that the case be remanded to the moonsiff for re-trial, with instructions that the said moonsiff restore the case to its original number on his file, and, having paid attention to the points noticed in this decree, (which the moonsiff omitted to do in the first trial) to re-try the case.

Costs for the present to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 21ST MARCH 1850.

Case No. 273 of 1848.

Appeal from the decision of Mohumud Yaksannul Ghunnee, Moonsiff of Jahanabad, passed on the 29th day of June 1848.

Issanchunder Mookerjee, Putnee Talookdar, (Plaintiff,) Appellant,

Joykisto Mookerjee, Rajkisto Mookerjee, guardians of Nobeenkisto Mookerjee, a minor, Anundonarayn Ghose, for self and on behalf of Kheilutchunder Ghose, a minor, Prawnnath Chowdry, Kalcepersaud Roy, Rughoonauth Roy, dismissed Phareedar, Sheikh Panaoollah, present Phareedar, Mujliss Beebee, widow of the late Haytoo Khan, deceased, Rijook Beebee, Modhoo Mayteh, a dismissed Pyke, and Goorooopersaud Baugdee, present Pyke, (Defendants,) Respondents.

CLAIM, for the possession of twenty beegahs and thirteen cottahs of maul, rent-paying land, laid at Company's rupees one hundred and fifty, (Company's rupees 150.)

It is set forth in the plaint, in the year 1245 B. S. the plaintiff had taken, from Mussumat Moharanee Kumulkoomaree of Burdwan, lot Sholepoor, on a putnee tenure, within which there is a mouzah called Ghola, adjoining to Dogerah, in which said mouzah there are twenty beegahs and thirteen cottahs of every description of maul, rent-paying land, which has all along been sub-let to ryots, on an annual rent of Sicca rupees thirty-two, annas ten, gundahs four, and the rent has been regularly realized; that antecedent to that time the dismissed phareedar and pyke, alleging the said land to be

chakran, filed a complaint in the magistrate's court, and was put in possession of the same at the end of the year 1243 B. S.; that the plaintiff having subsequently found on enquiry, that the land in dispute was maul and appertaining to the village called Dogerah, he was on the point of instituting a suit. Joykisto Mookerjee and others, alleging the land in question to be maul and appertaining to the village Teygoreh, which is within village Dhurrumpore, connected with their zumeendaree, lot Kooldoho, filed a suit for rupees two hundred and ninety-six, anna one, gundahs seven, cowrees two, (Company's rupees 296-1-7-2,) under No. 101, against Roghoonath Roy, &c., asserting the land to consist of twenty-six beegahs and seven cottahs, and its rent to be rupees forty, annas eight, gundahs two; that the plaintiff, on hearing of this, preferred his claim in that suit, which was subsequently, on the 16th day of September 1845, struck off the file, in consequence of which the plaintiff has instituted this suit to obtain possession of the land in dispute.

The defendants, Joykisto Mookerjee, Rajkisto Mookerjee, and Kaleepersaud Roy, in their answer, contend that the land in dispute is not twenty beegahs and thirteen cottahs; nor does it appertain to village Dogerah, but that it measures twenty-six beegahs and seven cottahs of land and appertains to the village Teygoreh, within Dhurrumpore, which is situated within their, the defendants', zumeendaree lot Kooldoho; that the former ryot, Pordol Khan, had farmed the land; that this fact will be established on the perusal of a decision No. 18799, passed by the sudder ameen; that the ryots of Teygoreh, by name Bollye, Saoo, Fuqeer Doss Banick, Horee Sircar, and Dhormodoss Oboshaun, having subsequently taken the said land in farm, they continued to pay the rent up to the year 1243 B. S., together with that for the village Teygoreh; that at the end of the year 1243 B. S., Roghoonath Roy Phareedar, and others, under the orders of the magistrate, having been placed in possession of the land in question, which they had alleged to be chakran, they, the defendants, instituted a suit under No. 101, that owing to that case having been struck off the file, they filed another No. 38.

The answer of the defendant, Anundonarayn Ghose, is the same as that of the foregoing defendants.

The moonsiff, having had brought forward before him this case together with the other No. 38, dismissed this case, on the grounds that, from the reports filed by the ameens who had been repeatedly deputed to make local enquiries in both the cases, it is clearly proved that the land in dispute is situated within the zumeendaree of Joykisto Mookerjee and others, and from the lawazimah, village papers, and the copy of the decision passed in the case instituted by the ryot of the former zumeendar, filed by Joykisto Mookerjee and others in the case No. 38, their statements having been fully established, &c., that case was decreed. "

The appellant states, that having preferred an appeal No. 274, against the decision of the moonsiff passed in the case No. 38, in which the grounds of his dissatisfaction have been detailed at length, it is not requisite to recapitulate in this case; and he solicits that this case may be heard and decided together with that of No. 274.

This appeal being similar to that of No. 274, and the grounds on which that case was decided are equally applicable to this case, hence it is not necessary to recapitulate them again, therefore I dismiss this appeal.

The respondents, Joykisto Mookerjee and others, having appeared unsummoned, the costs are to be paid by each party respectively.

THE 21ST MARCH 1850.

Case No. 274 of 1848.

Appeal from the decision of Mohummud Yabsannul Ghunnee, Moonsiff of Jahanabad, passed on the 29th day of June 1848.

Issanchunder Mookerjee, Putnee Talookdar, (Defendant,) Appellant,

Joykisto Mookerjee, Rajkisto Mookerjee, guardians of Nobeenkisto Mookerjee, a minor, (Plaintiffs,) Kalleepersaud Roy, Rughoonauth Roy, dismissed Phareedar, Sheikh Panaoollah, present Phareedar, Rijook Beebee, Mujliss Beebee, the heirs of Heytoo Khan, Moodoo Meyta, dismissed Pyke, Gooroopersaud *alias* Gooroochurn Bangdec, present Pyke, Anundonarayn Ghose, and Prawnnath Chowdry, (Defendants,) Respondents.

CLAIM, to obtain possession of twenty-six beegahs and seven cottahs of maul, rent-paying land, including wausilaut, mesne profits, laid at Company's rupees two hundred and forty-one, annas eleven, gundahs eight, (Company's rupees 241-11-8.)

It appears from the papers in this case that the plaintiffs, Joykisto Mookerjee and Rajkisto Mookerjee, declare themselves to be the guardians of the minor, Nobeenkisto Mookerjee, who is the zumeendar of a six annas and eight gundahs share of lot Kooldoho, and that the plaintiff Kaleepersaud Roy also declares that he holds a four annas, five gundahs, one cowree, and one kraunt share in the aforesaid talook: they all assert that in the village Teygoreh, which adjoins the village Dhurrumpore, and situated within the lot in question, there are twenty-six beegahs and seven cottahs of every description of maul, rent-paying land, the rent of which amounts to the sum of rupees forty, annas eight, gundahs two, which rent has been regularly and duly realized: that Rughoonath Roy, phareedar, and Heytoo Khan, pyke, alleging the land in dispute to be chakran

land given for certain service, filed a complaint before the magistrate, who, at the end of 1243 B. S., ordered them, that is to say, Rughoonauth, phareedar, and Heytoo, pyke, to be put in possession of the said land, in consequence of which the plaintiffs instituted this suit.

The defendant, Issanchunder Mookerjee, in his answer, states he is the putnee talookdar of lot Sholepore within which is a village called Dogerah (adjoining to Ghola,) and in which there are twenty beegahs and thirteen cottahs of every description of maul, rent-paying land; the rent amounts to rupees thirty-two, annas ten, gundahs four, (Company's rupees 32-10-4,) which has been all along realized from the ryots; that the phareedar and pyke having obtained possession under the orders of the magistrate on a false complaint, stating that the land was chakran land given for service, he, the defendant, was about to file a suit, but the plaintiffs, having heard of his intentions, anticipated him by filing a suit No. 101, the defendant having preferred his claim in that suit, it was struck off the file, and he, the defendant, was directed to institute a suit, in accordance with which he did so under No. 124.

The moonsiff decreed the case, on the grounds that, from the village papers filed by the plaintiffs, and the ameen's reports, and from the copy of a decision No. 18799, the claim of the plaintiffs had been clearly proved.

It is urged, in the appeal, that the fact of the land in question appertaining to the village Dogerah has been proved by the evidence of the ryots of that village, that the village papers filed by the plaintiff are fabricated documents, that the decision No. 18799 does not at all affect the land in dispute, and complains against the conduct of the ameen who filed the report, and although these facts were all proved, the moonsiff did not pay any attention to his case, but unjustly decided the case.

This appeal is similar to No. 273, which case was heard and decided with this appeal. On the perusal of the decision No. 18799, filed by the plaintiff in the original suit, and the village papers and the report filed by the ameen, it clearly appears that the land in dispute is situated in mouzah Teygoreh, appertaining to the village Dhurrumpore, within the zumeendaree of the plaintiffs' lot Kooldoho. Hence I consider the decision passed by the moonsiff, on the 29th day of June 1848, sound and just, and I dismiss this appeal.

The respondents, Joykisto Mookerjee and others, having appeared unsummoned, the costs are to be paid by each party respectively.

THE 21ST MARCH 1848.

Case No. 285 of 1848.

Appeal from the decision of Baboo Doorgapersaud Ghose, Moonsiff of Nyaserai, passed on the 15th day of July 1848.

Olongomoonjoree Dasse, Talookdar, (Defendant,) Appellant,

versus

Chunder Seekhur Roy, (Plaintiff,) Respondent.

CLAIM, for the possession of purchased resumed land, with damages, laid at rupees sixty-one, annas six, gundahs fourteen, cowree one, caugs three, (Company's rupees 61-6-14-1-3.)

It appears from the papers in this case that one Issurchunder Mookerjee held in farm forty-seven beegahs, eleven cottahs, and seven chitacks of unproved lakhiraj, rent-free land, resumed as per decision No. 902, in the villages Babna and Shorgeyrah, &c., and the rent of which was Company's rupees twenty-two, annas five, gundahs eleven, cowrees two, and that the aforesaid land is included in his taidaud No. 36043; that the property having been put up for sale for arrears due by Issurchunder Mookerjee, the plaintiff purchased the same on the 13th day of Sraubun 1250 B. S., for the sum of rupees forty-five: that the talookdar of Babna, Olongomoonjoree Dasse, having leagued with the ryots, who farmed two beegahs and three and a quarter cottahs of the land of that village, Babna, the rent of which is, at the established rate, rupees five, annas thirteen, gundahs ten, annually, did not give the plaintiff the possession of the said land and trees, neither did the talookdar of Shorgeyreh, Juggobundoo Roy, in the same manner give the plaintiff possession of the four beegahs and four and half cottahs of land which the ryots farmed in that village, and the rent of which is, at the fixed rate, rupees four, annas eight, gundahs ten, annually, thus making the total of beegahs six, seven and three quarter cottahs of land, and of rent rupees ten, annas six, in consequence of which the plaintiff instituted this suit for rupees one hundred and thirty-five, annas fifteen, gundahs five, that is to say,

	Rs.	As.	Gs.
For the value of the land,	83	0	0
Ditto ditto for the trees,	8	0	0
Wausilaut, mesne profits,	44	15	5
Total,	135	15	5

The defendant Juggobundoo Roy, in his answer, states that the four beegahs and four and half cottahs of land in village Shorgeyreh was never rent-free, but always maul, rent-paying.

The defendant Olongomoonjoree Dasse, in her answer, also states that the two beegahs and three and a quarter cottahs of land and trees in the village Babna was never lakhiraj, rent-free land, but always maul, rent-paying.

The moonsiff, on the perusal of the decision No. 902, passed by the special deputy collector, and the certificate of the auction purchase of the property by the plaintiff, and for the other reasons recorded by him, having considered the claim of the plaintiff established, decreed the case.

It is urged, in appeal, that the respondent states in his plaint that the rent is according to the established rate rupees ten, annas six, annually, hence he should have calculated the suit on the amount of revenue collected by the Government, and not on the value of the land, which is in contravention to Schedule B., Regulation X., 1829, and therefore inadmissible in a court of justice, although the moonsiff did not notice the same.

Although the appellant did not, in his answer in the original suit, make any allusion regarding the incorrectness of the plaint, still as he has done so in the appellate court, it became necessary to enquire into the point. On the perusal of the original plaint, it appears that the respondent has distinctly stated that the Government revenue on six beegahs and seven and three quarter cottahs of disputed land, is rupees ten, annas six. By Section 8, Schedule B. of Regulation X., 1829, the value of the suit should be assumed at three times the amount of the annual jumma, which the respondent has not done, neither did the moonsiff notice this point. Hence, considering the decision of the moonsiff to be illegal and incomplete, I therefore decree the appeal, and reverse the decision of the moonsiff, passed on the 15th day of July 1848, and order that the case be remanded to him for re-trial, with instructions to restore the case to its original number on his file, and to re-try it with reference to the omission noticed in this decree.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 21ST MARCH 1850.

Case No. 280 of 1848.

Appeal from the decision of Mohummud Yabsannul Ghunnee, Moonsiff of Jahanabad, passed on the 20th day of July 1848.

Chand Khan, (Plaintiff,) Appellant,

versus

Puncharam Baugdee, Mookhtaram Baugdee, deceased, and Komulmonee Dossee, daughter-in-law of the deceased, (Defendants,) Respondents.

CLAIM, for the recovery of a sum of money, amounting to rupees twenty-nine, annas six, advanced on loan on a bond, including interest.

The plaintiff sets forth that the defendants, Puncharam Baugdee, Mookhtaram Baugdee, and Bonmalee Baugdee, borrowed the sum of rupees twenty-five from the plaintiff, on a bond, bearing date the 5th day of Assin 1251 B. S., on the condition of the debt being liquidated in the following month of Kartick, with interest; that on the failure of the defendant to repay the amount due, the plaintiff instituted this suit.

The moonsiff having decreed the case *ex parte* on the 30th day of December 1845, the defendant Mookhtaram Baugdee, on the 12th day of May 1846, filed a miscellaneous petition No. 28, together with a copy of the moonsiff's decision, and a certificate in the English language, signed by Mr. Llewellyn, (purporting to show that Mookhtaram Baugdee was, on the date that appears on the face of the bond, on duty at the Cathedral church in Calcutta,) soliciting permission to prefer an appeal, which prayer was granted on the 24th day of March 1847. Mookhtaram, alleging that his son Bonmalee was dead, preferred an appeal under No. 88, with Puncharam Baugdee, his brother, which appeal was, on the grounds recorded by the judge, decreed on the 29th day of June 1847, and the case was remanded to the moonsiff for re-trial.

The defendants, Puncharam Baugdee, Mookhtaram Baugdee, and Komulmonee Dossee, in their answer before the moonsiff, deny the claim of the plaintiff, and aver that the bond is a fabricated document, and they solicited permission to institute a complaint for forgery.

The moonsiff, with reference to the decision of the judge, having considered that the plaintiff had sued the defendant from enmity, on the strength of a fabricated bond, dismissed the case, and ordered that, should the defendants wish to prefer a suit respecting the fabrication of the document, they were at liberty to petition legally the proper authority.

The appellant states that his claim has been proved by the witnesses produced by him, and although he had solicited the moonsiff to

institute a local enquiry, the moonsiff did not take the circumstance into consideration, but unjustly dismissed the case, and authorised the defendant to institute a suit in the foudjdarce court, &c.

On the perusal of my proceedings of the 29th day of June 1847, it appears that the defendant, Mookhtaram Bangdee, had been in attendance on duty at the Cathedral church in Calcutta, on the day and date which appears on the face of the bond, at the time on which the bond was signed and executed, and that he, Mookhtaram Bangdee, had been residing with his family in Calcutta for twenty-one or twenty-two years previous to the date on the face of the bond. Under these circumstances I consider the decision of the moonsiff to be just and sound, and the objections offered by the appellant, frivolous and vexatious, therefore I dismiss this appeal, and order that, in consequence of the plaint being evidently frivolous and vexatious, I fine the appellant fifty rupees under the provisions of Section 12, Regulation III. of 1793, and again fifty rupees fine under Section 3, Regulation XIII. of 1796, owing to the appeal being also litigious, and in failure of payment of the said first fine of fifty rupees, under Section 12, Regulation III. of 1793, the appellant, Chand Khan, is to be held in custody until the said first fine aforesaid be duly paid.

Although the respondent appeared unsummoned, still, with reference to Section 12, Regulation III. of 1793, I direct that all costs of this case are to be paid by the appellant.

A copy of this decree is to be placed on the file of the miscellaneous cases, in order that an enquiry may be instituted respecting the forgery of the bond, and the perjury of the witnesses to it in the regular manner.

THE 21ST MARCH 1850.

Case No. 284 of 1848.

Appeal from the decision of Baboo Jugbundoo Banerjee, Moonsiff of Byedbattee, dated the 25th day of July 1848.

Issurchunder Ghose, Gomashtah, (Defendant,) Appellant,

versus

Sheeboow Bewa, Plaintiff, Ramjeewun Bhuttacharje, and Ramchund Doss, (Defendants,) Respondents.

CLAIM, for damages sustained by the loss of potatoes, laid at rupees fifty-one, (Company's rupees 51.)

It appears from the papers in this case that the plaintiff had sown potatoes on the one beegah and two cottahs of maul, rent-paying land, farmed by one Ramjeewun Bhuttacharje, who subsequently sub-let the land to the plaintiff, on the 5th day of Bysack 1242 B. S., situated in the village of Basdebpoore; that on the 14th day of Phalgun 1253 B. S., the defendant, Issurchunder Ghose, gomashta, had

forcibly taken and carried away fifteen maunds of potatoes, (leaving only nine maunds out of the whole,) cultivated by the plaintiff, together with certain other articles, such as thalas and lotas, the whole of which altogether are valued at the sum of sixteen rupees, annas twelve, for the recovery of which the plaintiff instituted this suit.

The defendant, Issurchunder Ghose, in his answer, denies the demand of the plaintiff, and states, there was a jumma of rupees ninety-six in the aforesaid village, in the name of Ramjeeewun Bhuttacharje, who, out of the rent due for the year 1253, up to the month of Maugh, having paid only one rupee and twelve annas, and having failed to pay the balance, Moteclaul, the foudaree gomashtha of the talookdar, after issuing a notice under the provisions of Regulation V., 1812, attached twelve maunds of potatoes with the aid of the police muzkoo-ree chupprasse, and placed the same in the charge of Rotton Sirdar and others; that the plaintiff had complained against him, the defendant, in the foudaree court, stating that the potatoes had been plundered on two respective dates; that case having been dismissed, the plaintiff has filed this action, stating that the potatoes were taken and carried away on one day, which is in opposition to his petition filed in the foudaree court; that the aforesaid Bhuttacharje received back nine maunds out of the attached potatoes, and had given his receipt to that effect to the ameen; that the plaintiff having omitted to make the talookdar and his gomashtha defendants in this case, the plaint cannot be admitted in a court of justice.

The defendant, Ramjeeewun Bhuttacharje, in his answer, supports the plaint.

The moonsiff states that, from the evidence of the five witnesses named by the plaintiff, the depositions of whom had been taken by the ameen deputed to make the local enquiry, as well as from the depositions of nine other persons, neighbours on the spot, the fact that the defendant, Issurchunder Ghose, had plundered fifteen maunds of potatoes cultivated by the plaintiff had been clearly proved; the evidence of five witnesses for the defendant do not tally with each other; the objections of the defendant that the plaint is inadmissible, because the talookdar and gomashtha were not made defendants in the case, are unworthy of notice, because, when the plaintiff has distinctly stated in his plaint that the defendant, Issurchunder Ghose, had forcibly taken away the property, then it is not necessary to include the names of the talookdar and gomashtha as defendants in this case. Under these circumstances and with reference to the report filed by the ameen, the moonsiff decreed the case, to the extent of fifteen rupees, with costs, according to that sum, against the defendant, Issurchunder Ghose.

The appellants urge, in their appeal, that the witnesses for the plaintiff are residents of other villages, and are not residents near the spot where the local enquiry took place; that some of the witnesses are related to the plaintiff; and some are the enemies to him, the

defendant; that the ameen, having leagued with the plaintiff, filed a report in his favor; that the moonsiff, without taking all these points into his consideration, decreed rupees fifteen as the value of fifteen maunds of potatoes.

After a careful perusal of all the papers in the original suit, the fact of the appellant having forcibly taken and carried away the potatoes cultivated by the plaintiff, respondent, has clearly been proved and established; and with reference to the grounds recorded by the moonsiff, I consider his decision to be just and sound, and therefore I dismiss this appeal.

The respondent, Sheeboo Bewa, having appeared unsummoned, costs are to be paid by each party respectively.

THE 21ST MARCH 1850.

Case No. 278 of 1848.

Appeal from the decision of Baboo Nobinchunder Mitter, Moonsiff of Rajapore, passed on the 20th day of July 1848.

Joykisto Mookerjee and Rajkisto Mookerjee, Defendants,
(Appellants,)

versus

Rammohun Gullovee, Plaintiff, and Ramchunder Chatterjee,
Defendant, (Respondents.)

CLAIM, for the reversal of a summary award given under Regulation V. of 1812, laid at rupees forty-one, annas twelve, (Company's rupees 41-12.)

It appears from the papers in this case that Goluckchunder Biswas, the gomashita of Joykisto Mookerjee and Rajkisto Mookerjee, joint zumeendars of lot Koomeermorah, and Bhugobanchunder Banerjee, the gomashita of Rughoonath Ghose, ijaradar, enforced the provisions of Regulation V., 1812, against the plaintiff, for rupees thirty-three, anna one, being the arrears of rent due for the year 1252 B. S., including interest, and attached his property and petitioned the ameen of Sulkea to have the same sold, which was subsequently effected, and the sum of rupees forty-one, annas twelve, including costs, was realized: that the plaintiff does not farm any maul, rent-paying land, belonging to the zumeendars; but that he holds in farm the resumed lakhiraj rent-free land, belonging to Syudoonissa Beebee, in the village Khas Roodrapore; that the defendants, with the view of distressing the plaintiff, had made a false demand of arrears of rent, in consequence of which the plaintiff instituted this suit.

The defendants, Joykisto Mookerjee, Rajkisto Mookerjee, and Ramchunder Chatterjee, zumeendars, and Rughoonath Ghose, the ijaradar, in their answer, deny the demand of the plaintiff, and aver

that on the 15th day of Kartick 1244 B. S. the plaintiff had given a kubooleut (counterpart of a lease) to the gomashtha of the former zumeendars, for twenty beegahs and sixteen and half cottahs of every description of land, within the village Khas Roodrapore, at an annual rent of rupees forty, annas ten, gundahs seventeen; that after deducting rupees seven, anna one, gundahs eighteen, caug one and a half, on account of the land which was subsequently resumed, the actual rent amounted to rupees thirty-three, annas eight, gundahs eighteen, caugs fourteen and a half, which the plaintiff has regularly continued to pay, but, having failed to pay the rent for the year 1252 B. S. up to Phalagoon, that is to say, rupees thirty-three, anna one, including interest, they, the appellants, caused a notice to be issued against him, under the provisions of Regulation V., 1812, and attached his movable property, which was subsequently sold by the ameen of Sulkea, and the amount with costs realized.

The moonsiff states the points for adjudication are,

First. Whether the plaintiff holds in farm any maul, rent-paying land, belonging to the zumeendars and ijaradar or not?

Secondly. Whether the demand of their managers is applicable to Regulation V., 1812, or not?

The gomashtha in like manner demanded the rent for the year 1251 B. S., and put in force the provisions of Regulation V., 1812 against the plaintiff, who deposited the amount and instituted a suit, in consequence, under No. 4, to obtain a refund of the amount, together with the value of a boat. That case having been decreed, and this case being similar to that, No. 4, it is not necessary to recapitulate the grounds on which the demand of the plaintiff was considered duly proved, and the objections offered by the defendants not established; and therefore the moonsiff decreed the case.

It is urged, in the appeal, that the appellants, being dissatisfied with the decision of the moonsiff passed in case No. 4, preferred an appeal under No. 277, in which they have detailed at length the grounds for appealing, and solicit that this appeal may be decided with No. 277.

This case being similar to the appeal No. 277, and the grounds on which that case was decided, being also applicable to this case, it is not necessary to recapitulate them in the present case; therefore, I dismiss this appeal, with costs. •

THE 21ST MARCH 1850.

Case No. 39 of 1849.

Appeal from the decision of Baboo Taruckchunder Ghose, Moonsiff of Mahanand, dated the 22nd day of December 1848.

Doollub Singh Roy, Plaintiff, (Appellant,)

versus.

Ombeekachurn Roy, Mokoondobullub Roy, Tareeneepersad Roy, Juggissur Roy, Soobul Doolea, Kallachand Doolea, Bhyrob Doolea, Gorachand Doolea, Bindrabun Doolea, Seeboo Doolea, Dookheeram Doolea, Necloo Doolea, Tarachand Doolea, Bheem Doolea, Lukhun Doolea, Mudoosoodun Doolea, Rajoo Doolea, Ramchand Doolea, Gunga Harree, Godha Harree, Hara Doolea, Mudun Harree, Bungsee Harree, Soroop Baugdee, Gorachand Doome, and Beharee Doolea, son of the late Debnath Doolea, deceased, Defendants, (Respondents.)

SUIT for damages sustained by the loss of paddy, straw, and bamboos, laid at Company's rupees one hundred and forty-four, annas thirteen, gundahs six, cowrees two.

On the 23rd day of February 1850 the appellant filed a razeenamah, deed of acquiescence, on his part and the respondent's; Ombeekachurn Roy and Mokoondobullub Roy also filed a safecnamah, deed of compromise, both parties declaring that they have amicably settled their cause out of court.

In reference to these two aforesaid documents, I dismiss this appeal: costs to be paid by each party respectively.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 21ST MARCH 1850.

Case No. 276 of 1848.

Appeal from the decision of Mohunmud Alum, Moonsiff of Oolooberrea, passed on the 15th day of July 1848.

Jadobchunder Doss, (Plaintiff,) Appellant,

versus

Sheikh Beeramooddeen, (Defendant,) Respondent.

CLAIM, for the recovery of a sum of money, amounting to rupees twenty-two, annas nine, advanced on loan on a bond including interest.

The plaintiff sets forth that the defendant borrowed the sum of rupees sixteen, from the plaintiff, on a bond bearing date the 21st day of Assin 1251 B. S., the interest accruing on which amounted to rupees six, annas nine, making a total sum of rupees twenty-two, annas nine, (Company's rupees 22-9): on the failure of the defendant to repay the amount, the plaintiff instituted this suit.

The defendant, in his answer, denies the debt, and avers that the plaintiff has falsely sued him from enmity.

The moonsiff, considering the bond to be suspicious, and owing to the discrepancies in the evidence of the four witnesses produced by the plaintiff, in regard to the advance of the money on loan on the bond, dismissed the case.

It is urged, in the appeal, that although there are some slight discrepancies in the depositions of the witnesses of the appellant, they having leagued with the respondent, still they, the said witnesses, prove all the material points regarding the giving and the taking of the money in question, and that the moonsiff had decided the case solely on conjecture.

The appearance of the bond filed by the plaintiff is certainly very suspicious as to its authenticity; and from the discrepancies in the evidence given by the witnesses for the appellant, no dependance can be placed on their testimony. The decision passed by the moonsiff, on the 15th day of July 1848, appears to me both sound and just. Therefore I dismiss this case, with costs.

THE 26TH MARCH 1850.

Case No. 27 of 1848.

Appeal from the decision of James Reily, Esq., late Principal Sudder Ameen of Hooghly, passed on the 11th day of August 1848.

Issurchunder Ghosal, Deputy Magistrate of Jahanabad, Zillah Hooghly, (Defendant,) Appellant,
versus

Sheikh Husseinooddeen, Sheikh Muneerooddeen, Sheikh Misbahooddeen, and Sheikh Rusheedooddeen Muhummud, (Plaintiffs,) Respondents.

CLAIM, for the recovery of the rent of a bungalow, damages done to it, and loss sustained by the destruction of mangoe trees, &c., as well as in the haut, laid at Company's rupees nine hundred and fifty-three, annas twelve, (Company's rupees 953-12.)

It is set forth in the plaint that, in the month of Phalgun 1252 B. S., the defendant, Baboo Issurchunder Ghosal, the deputy magistrate, came from Kasheegunge to Jahanabad, and solicited the use of a bungalow situated in Aram Baug, in which to hold his cutchery for the space of a month, on the condition that, when the thannah bungalow was repaired, he, Issurchunder Ghosal, would vacate the house. The plaintiffs from courtesy consented, and the defendant took possession of the place accordingly, holding his cutchery in a part and appropriating the remainder to the purposes of a maul khanna and dufter khannah, &c.; that the defendant commenced the repairs of the thannah bungalow, and when it was finished, he, Issurchunder Ghosal, appropriated it for the accommodation of his family, whom he then brought from Calcutta, removing the thannah

and the offices to a moodee khana at Kistopore, that for fourteen months the defendant retained forcible possession of Aram Baug without paying any rent, without repairing it himself or allowing the plaintiffs to do so, and without any permission from them in writing to occupy the house; that the rains caused the thatch to rot and the side walls to fall down; that the antchulla bungalow has in consequence been destroyed. The defendant without any permission or order from the Government forcibly cut down the mangoe trees in the garden of seven beegahs, dug up the graves of the plaintiff's ancestors, and with the earth made and burnt bricks and built a privy over some of the graves, added to which he closed the road leading to the astannah temple, which prevents the performance of certain of their religious rites, and by these means degraded and disgraced them. He has since erected a pukka house on the lands. That the defendant further ruined their haut at Sopparah by setting up another haut at Bassoodebpore, and he employed the police in seizing the vendors and compelling them to go to the new haut, which continued from Aughun to Phalgoon 1253 B. S. The defendant at length served the plaintiffs with a notice on the 4th day of May 1847, calling on them to make a settlement for the lands without offering any remuneration for the losses he had occasioned them; that the plaintiffs intend to sue for the lands separately; they now sue for damages committed by the defendant, Issurchunder Ghosal, for the period anterior to the date on which the notice was served, that is to say, for the destruction of the

Bungalow,.....	400	0
Ditto for rent for fourteen months, at 11-4,.....	157	8
For the value of the trees cut down in the garden,...	113	8
For the mangoes taken by the defendant,.....	198	8
For the loss sustained by setting up a new haut,.....	160	0

Total, rupees..... 1029 8

Total, rupees one thousand and twenty-nine, annas eight.

The defendant, in his answer, admits the occupation by him of the house from the month of February 1846 to February 1847, and to the possession of the garden in which the fruit trees exist, without having any written authority for either, but pleads that neither the house nor the lands belong to the plaintiffs, but to Ghassee Mean who had verbally consented to the occupation of the house by the defendant, until he, the defendant, had erected a house for himself, and also to his building on the land in question; that he repaired the house and left it in the state in which he had entered it; that the plaintiffs have not any kubooleut from him, the defendant; that without a document of this nature they cannot sue for rent; that they have separated their claim for the land from their present action for damages, which is contrary to law; that they have sued

defendant in his official capacity as magistrate, and therefore should be nonsuited: the plaintiffs are moreover living separate, and have not all a right each to the property which forms the basis of the present claim for damages.

The principal sudder ameen states, in his decision, as follows:

"Points for adjudication."

"First. Are the plaintiffs the real owners of the property in question?

"Secondly. What may be the amount of damages to which the plaintiffs are entitled?

"Thirdly. Do the objections advanced by the defendant affect the case?

"In regard to the first point the plaintiffs have filed three documents:

"First. A hibahnamah from Dubbeerooddeen *alias* Ghassee Mean to one of the plaintiffs, Russeedooddeen, dated the 2nd day of Aughun 1242 B. S.

"Secondly. A hibahnamah from Dubbeerooddeen to Misbahooddeen, another of the plaintiffs, dated the 7th day of Assin 1249 B. S.

"Thirdly. A shurakutnamah from Misbahooddeen to Husseinooddeen and Muneerooddeen, dated the 17th day of Kartick 1251 B. S.

"The first is proved by the evidence of Sheikh Panchoo and Hingun Jan, two witnesses whose names are in the deed of gift: the writer was Dubbeerooddeen himself. The second is proved by the evidence of Putcet Pabun Ghose and Sheikh Dhunnoo, two witnesses whose names are in the deed of gift: the writer was Dubbeerooddeen himself. The third is proved by the evidence of Shamuttoolla and Perro Khan.

"The first is dated *ten years*, the second *three years*, the third is dated upwards of *one year* anterior to the date of the defendant's occupancy of the house and garden. Added to this, the notice, which the defendant himself issued under Regulation I, 1824, was issued not against Dubbeerooddeen *alias* Ghassee Mean, but against three of those who appear as plaintiffs, namely, Misbahooddeen, Husseinooddeen, and Muneerooddeen, on the 12th August 1847, *a month and seven days* subsequent to the institution of the present suit, in which defendant expressly designates them as proprietors of the land. It is clear then that the proprietary right in the land, as well as in the outchulla bungalow, has been proved beyond the possibility of a doubt to exist in plaintiffs, and not in Ghassee Mean.

"Defendant disputes this. But the only evidence he has offered against the point is, that report attributes the proprietorship to Ghassee Mean, and that he gave defendant permission verbally to occupy the bungalow, and that he personally pointed out the spot on which defendant might build the cutchery. To prove this he has exa-

mined the magistrate, Mr. Wauchope, whose recollections are most vague on the subject, and Ramlaul Dobe, a chupprassee in attendance on the defendant, Panacollah, also a chupprassee, and one Sheik Beychoo, who was the thannah jemadar: these witnesses depose to Ghassee Mean having offered the land, and having consented to the defendant's occupying the bungalow till his own house was ready; but the conversation on the subject took place inside the tent, and the witnesses were all *outside*. It is clear therefore that their evidence on the point cannot be depended on, nor will the plaintiffs' admission that the bungalow was offered for a month avail defendant, as it was necessary for defendant to prove that the bungalow was given for an indefinite period, that is, till his own house was ready. It is strange too that defendant has no better evidence than men of their class, who may always be suspected to be under the influence of their immediate superiors. Irrespective, however, of the suspicious nature of the evidence, the *agreement was verbal and founded on no consideration*, which is fatal to its validity, though the documents were proved. There is another consideration which impugns the plea in question, namely, that soon after defendant took possession of the bungalow, a feud arose between him and the parties, which necessarily cancelled all obligations based on bare courtesy. These arguments are however obviously supererogatory, seeing that the person whose consent is pleaded by defendant had no right at the time to exercise any will on the subject, having by the transfer of his interests deprived himself of the right to interfere.

"Defendant's vakeels argue that the land being nuzooraut, and Ghassee Mean being acknowledged the former proprietor of the land, he cannot transfer the property except to appoint a successor on the prospect of death. But the law simply declares that he may appoint a successor, and the deed of transfer alleges that, persuaded of the uncertainty of life, he therefore transfers the trustship to his son Russeedooddeen. Be this as it may, it has been proved that plaintiffs were in possession in virtue of these deeds long before defendant came to the place. Whether, therefore, the right lapsed out of Dubbeerooddeen's hands or not, it is clear that plaintiff's possession barred Dubbeerooddeen from the exercise of any right till application to the court enabled him to recover these rights.

"In regard to the second point, plaintiffs have proved by witnesses, who saw and examined into the state of things at the time, and some of whom were deputed by plaintiffs as appraisers to value the fruit on the trees, that the following is the value of the property destroyed and lost to the plaintiffs.

- "1. The autchulla in Aram Baug, originally built for 1,000 rupees, valued by Sheikh Paunchoo and Ramdhone and other witnesses,..... 400 0

" 2.	The rent for thirteen months at 11 rupees, 4 annas monthly,	146	4
" 3.	Twelve mangoe trees valued by the witnesses at 5 rupees,	60	0
" 4.	Five kuddum trees, at 3 rupees,	15	0
" 5.	One neem tree,.....	0	12
" 6.	Jhow tree,.....	0	8
" 7.	Branches of the existing mangoe trees,	33	0
" 8.	Mangoes in season 6,500, at 1 rupee 4 annas per hundred,	81	4
" 9.	Mangoes passed the full season 3,800, at 1 rupee 4 annas,	57	0
" 10.	The loss from the haul in four months, at 40 rupees,	160	0
		<hr/>	
		" Damages, rupees...	953 12

" The Bungalow.

" He contends that the house was old; be it so, but it was originally built for 1,000 rupees, and has been valued by plaintiffs' witnesses, Sheik Paunchoo, Ramdhone, and others, at 400 rupees. Defendant, moreover, was the cause of the walls of the house, which were of earth, having come down from not having repaired the bungalow, and the rain having penetrated the walls. His own witnesses, especially Ramkulpo Dutt, deposes to defendant having disbursed but 8 rupees in repairs, preparatory to his entering it, and that he, subsequently, but once patched up some of the leaks, which cost him only 1 rupee 12 annas. This last sum was therefore all that he expended on the house during the thirteen months he occupied it.

" The Rent.

" Defendant contends that plaintiffs have no kubooleut, and is therefore not entitled to rent. This, however, is a mistake. Plaintiffs, being proprietors, are necessarily entitled to compensation for the time during which they were deprived of the house; and if not in the shape of rent, they are entitled to an equivalent for the use and occupation of the house to the extent in which they may have suffered. The house was previously let to a Mr. Ledly, and he paid a rent of rupees 11-4 monthly. I think it only equitable to award plaintiff damages equal to the amount of this rent for thirteen months, defendant having confessed to have occupied the house from February 1846 to February 1847. There is one feature in this part of the case which should be noticed, namely, defendant appears to have turned the thannah bungalow into a residence for his family, and the house in dispute into a Government house. The exchange may not be a subject of blame, but the circumstance should be remarked in order to deprive defendant of the plea that

the Government, and not defendant, was responsible for the rent, as he might have held his cutchery in the thannah bungalow.

“The Mangoe Trees.

“Defendant admits having cut three trees down. He pleads that the lands have been taken by the Government for a cutchery: but defendant possesses no lease from plaintiffs, nor from Ghassee Mean. He states further that he served the plaintiffs with a notice, in accordance with the provisions of Regulation I., 1824, and obtained the decision of the punchyet, but the istahar is dated 4th May 1847, long after the pukha building, alleged to be the Government cutchery, had been built, (he having removed into it in February 1847,) which only makes the defendant personally responsible for the damages, but shows that an attempt was made after the house was built to legalize the seizure or legalize the appropriation of the land, for the purposes alleged, is not directly within the scope of the present action for me to say as the question relating to defendant's right to occupy the land is not before the court; but it was necessary to advert to this circumstance, to show that the action for the mangoe trees, which stood on that land, was properly brought against the defendant instead of the Government. The issuing of the istahar, however, did not in itself confer any right on the Government. Regulation I., 1824 enjoins a reference to the Government, and requires their sanction before any appropriation of the land can take place. This does not appear to have been yet obtained. The deputy magistrate refers only to a Circular Order, No. 1801, of the superintendent of police, as his authority for issuing the istahar. This may be correct; yet that order can only prescribe the mode of procedure for defendant to pursue; it cannot supersede the provisions of a regulation. Defendant, as deputy magistrate, issued a second notice, dated the 12th of August 1847, *five weeks after the present action was brought* by plaintiff, and consequently long after defendant's pukka house was built; and even this was superseded, and a third notice issued by the magistrate, Mr. Wauchope himself, on the 3rd day of May 1848, about ten months subsequent to this suit having been filed, and a year and two months after defendant's pukka house had been built. These considerations still further justify the action against the defendant. It also settles the point that Misbahooddeen, Husseenudddeen, and Muncrooddeen, were proprietors of the land, as the second notice issued by defendant expressly declares them to be so, and is addressed to them as such, which nullifies the plea defendant set up in his answer that Ghassee Mean was the proprietor of the land.

“The Neem and Jhow Trees.

“The cutting down of these trees has been proved, and the argument regarding the land in which they stood is the same as that stated above.

"Kuddum Trees.

"It has been proved that defendant cut down these trees, and that they are in the garden, consisting of seven beegahs, which is proved to be in the defendant's possession. It is urged they are in the thannah lands, and do not belong to the plaintiffs; but plaintiffs have filed a decree of court, dated the 30th of July 1808, from which it appears that plaintiffs' ancestor, Sheik Mohummud Bakur, had sued one Bhujohurree Rai, darogah, for the rent of the land and of a house which he occupied as his cutchery, and which rent was decreed against him. Plaintiffs have also filed a report made by Goluckchunder Mookerjee, darogah of the thannah at Jahanabad, dated the 27th April 1842, regarding some trees situated in a garden opposite the thannah. It appears further from defendant's own witnesses that these trees are so near the pukka house built by the defendant, that they were cut down from an apprehension, that if they fell they might injure the building. I have no doubt, therefore, that the trees are on the lands taken by defendant and not on the thannah lands."

"Branches of the existing Mangoe Trees.

"It has been proved that the defendant cut down the branches of six or seven trees standing on the land walled in by defendant, and twenty-eight or twenty-nine trees standing outside the enclosure; they have not been specifically valued by the witnesses; but as the mangoe trees already alluded to are valued at five rupees each, the branches of each may be valued at least at a rupee each tree, and thirty-three trees at this rate at thirty-three rupees."

"The Mangoes.

"Plaintiffs' witnesses, consisting of those who had seen the trees in fruit, and those whom the plaintiffs had sent as appraisers, value the mangoes of the full seasons at one rupee four annas per hundred, and the quantity they mention present an average of 6,500. Those past the season at one rupee eight annas, and the quantity averages 3,800 mangoes."

"Loss arising from the Haut.

"Defendant denies having set up a new haut at Basoodebpore, but the following circumstances create a presumption that he did set it up:

"*First.* That no attempt of the kind was made till defendant removed his cutchery to Jahanabad."

"*Secondly.* That the attempt was made soon after he went there, and after he and the plaintiffs got into feuds regarding the land on which defendant has built his house, and the bungalow for which plaintiffs have sought damages in this case."

"*Thirdly.* That the alleged proprietor of the new haut, Mohesh Chuckerbuttee, appears to have petitioned the defendant for aid to

provide against the hatoora, or vendors from being prevented to go to the new haut, and defendant passed an order on the police in conformity with the prayer of the petitioner, which proves that the police was deputed on the occasion, and that the evidence adduced by the plaintiffs of the forcible interference of the police in favor of the new haut, is supported by the possibility as well as probability of such an interference having occurred.

"*Fourthly.* That Mohesh Chuckerbuttee is in most indigent circumstances. This is shown by defendant's own witnesses, and to obviate the improbability of his being the proprietor, more especially as in his petition to the defendant, applying for aid from the police, he speaks of having bought up the unsold articles brought to the haut. Defendant has attempted to elicit from his witnesses that Nemy Poddar was a co-sharer of the haut with Mohesh Chuckerbuttee, which is not only in contravention of the statement made by defendant in his answer, but in the petition presented to defendant, in which Mohesh Chuckerbuttee represents himself as the sole proprietor of the haut.

"*Fifthly.* That the subsequent dispersion of the new haut, notwithstanding the aid of the police, creates a presumption that forcible interference was used to establish the new haut.

"*Sixthly.* That the new haut was held on the same day with the old haut belonging to the plaintiffs, and that the distance of one from the other was not one-fourth of a coss, about 800 yards.

"*Seventhly.* That plaintiffs' witnesses distinctly assert that the police did interfere, and force the vendors to go to the new haut in the name of Mohesh Chuckerbuttee; and their evidence is so fully corroborated by the circumstances above noted as to leave no doubt in my mind that the attempt was made by the defendant.

"*Eighthly.* Their evidence proves further that the plaintiffs' claim for damages does not exceed the actual amount of loss they have sustained; and although defendant contends that the profits were of the nature of sayer, it is not necessary to enquire into the nature of the profits, but the fact merely as to whether defendant's interference occasioned plaintiffs the loss of that of which they were previously in the receipt.

"In regard to the defendant's other objections, he contends—

"*First.* That plaintiffs have sued him in his official capacity; but the objection is obviated by plaintiffs having, in their replication, explained that his title was used in deference to his official rank, and to distinguish him from other Isserchunder Ghosals.

"*Secondly.* Defendant contends that plaintiffs have divided their claim by omitting to sue for the lands; but this will not avail him, defendant, having issued notice to plaintiffs declaring that the lands were required for the Government. He also pleads that they are in the possession of Government. Had plaintiffs included the lands in their suit without making the Government a party, then there might have been clearer grounds for a nonsuit.

“Thirdly. Defendant contends that plaintiffs are living separate, and have not a right each to all the property which forms the foundation of the claim for damages; but the objection is remedied by plaintiffs having *agreed* to sue conjointly; it is an objection which any one of the plaintiffs might have used against the other, had he not joined in the suit; but it is not an objection which defendant can make; moreover, the lands shown by the taidaud filed by the plaintiffs to be nuzooraut khanka khurch lands, that is, lands endowed for charitable purposes by one and the same person, and it is proved that the proceeds are jointly applied to charitable purposes: both of these features invest the plaintiffs with a joint right of action.

“Fourthly. Defendant denies that plaintiffs are owners of the property for which damages are sought: this has been already anticipated and answered.

“Fifthly. Defendant contends that he had the consent of Ghassee Meean, whom he declares as the actual proprietor of the land and the house; this also has been anticipated and answered.

“Sixthly. Defendant argues that plaintiffs have no kuboolout from him, and cannot therefore sue for the rents: this also has been anticipated.

“From all these circumstances I am of opinion that plaintiffs are entitled to the damages as shown above; and I therefore direct that plaintiffs obtain damages, rupees 953-12, with costs and interest on both sums, from defendant.”

The appellant, being dissatisfied with the decision of the principal sudder ameen, states, in his wujooth, that the said decision is, for the following reasons, inconsiderate and unjust:

First. The facts that Dubbeerooddeen being the father of the plaintiffs, Misbahooddeen and Russeedooddeen (a minor,) also being guardian of the latter and of his (Dubbeerooddeen's) being the proprietor, and being in possession of the land in dispute, have been proved by the witnesses: that notwithstanding the appellant solicited an enquiry to be made into all the circumstances, the principal sudder ameen did not pay any attention to it, but admitted the forged hibanamah, deed of gift, filed by the plaintiffs; that according to the Sherra, Mahomedan law, a mootawullee cannot, during his lifetime, give a towleentnamah to his sons for nuzooraut property. That the principal sudder ameen has decided the case contrary to the Sherra; moreover, though the appellant had brought to the notice of the principal sudder ameen, that Russeedooddeen was a minor, the principal sudder ameen took no notice of it: that the plaintiffs, Muneerooddeen and Husseinooddeen, on the plea of alleged shur-rukutnamah, claiming the right of the plaintiff, Misbahooddeen, a share on the nuzooraut property, is also contrary to the Sherra.

Secondly. The fact that the useless trees having been cut down for the erection of a pukka house, the property of Government, has been proved by the evidence of the witnesses produced by both

parties: hence all loss and gain are connected with Government, and therefore the demand of the plaintiffs for damages for trees should be against the Government and not against him, the appellant.

Thirdly. It would appear from the plaint and the circumstances of the case that Husseinooddeen and Muneerooddeen live separately from the other plaintiffs and Dubbeerooddeen; and that the said Muneerooddeen and Husseinooddeen have no right nor interest in the haut and autchulla; hence although the plaintiffs appear to have separate rights, the principal sudder ameen, without determining the respective rights of each of the plaintiffs severally, or looking into the loss of stamp, decreed the case; that, owing to the above cause, the case ought to have been nonsuited.

Fourthly. The witnesses for appellant were Government servants, that is to say, Ramlaul Döobeh, Panaoolah chupprasse, and Beychoo jemadar, whose evidence the principal sudder ameen disregarded, while he approved the testimony of the witnesses for the plaintiffs, who were either the ryots or servants or relations of the plaintiffs, thus casting a slur on the evidence of the police servants; moreover, the fact of Dubbeerooddeen being the proprietor of the land has been proved by the evidence of the magistrate; likewise the fact of Dubbeerooddeen having given the autchulla to the appellant, until the Government cutchery would be finished, has also been proved by the witnesses, whose evidence the principal sudder ameen had rejected on conjecture.

Fifthly. After the completion of the Government cutchery, a proclamation having been issued under Regulation I., 1824, and there being no pottah, lease, for the land in dispute, the principal sudder ameen unjustly made the appellant answerable for damages, because no enquiry was instituted as to whether the house was built at the expense of the Government, or that of the appellant, or who is the proprietor of it, hence it is surprising that the building should be profitable to Government, and that all losses should be made good by him, the appellant; that the proclamation having been issued after the building had been completed, does not cancel the right of the Government in it, or make the appellant the proprietor of it; rather that until the Government be made a defendant in the case it cannot be admitted in a court of justice; moreover, that the plaintiffs not having demanded the rent for the time previous to the issue of the proclamation, his demand therefore has been divided in the present action.

Sixthly. The principal sudder ameen states that in consequence of the appellant not holding his cutchery at the thannah house, in which he, the appellant, had placed his family, that he, the appellant, held it (the cutchery) in the autchulla, the rent for the said autchulla cannot be demanded from the Government; but as the point has not been raised by the Government, and as it will appear that the expense of the repairs of the autchulla during the period

the cutchery was held therein, had been paid by the Government, the circumstance requires consideration; further, the appellant never agreed to pay the rent, nor did the plaintiffs contradict the statement, and the principal sudder ameen also states, in his decision, that the plaintiffs cannot receive the rent.

Seventhly. The appellant held his outchery in the autchulla during the whole of the rainy season, and that the whole of the records of that department were lodged there; hence it is impossible that the walls of the autchulla could have been destroyed in consequence of the rain leaking into them; that some of the witnesses for the plaintiffs value the autchulla at four hundred rupees and others at five hundred rupees; that the papers exhibiting the receipts and disbursements for erecting the autchulla have not been filed in the case, hence the declaration of the principal sudder ameen that the autchulla had cost the sum of one thousand rupees, and that the value of it at the time the appellant held his cutchery in it, was four hundred rupees, and that for want of repairs the walls were destroyed by the rain, is astonishing; for, after stating that the plaintiffs are not entitled to rent, the principal sudder ameen has decreed the sum of rupees one hundred and forty-six, annas four, in their favor, on account of rent; further, that the plaintiffs are entitled to the loss sustained in the autchulla, whereas in fact the autchulla was never destroyed, because the appellant left it in the same condition as he got it; and though a petition was presented to the principal sudder ameen soliciting a local enquiry, no notice was taken of it.

Eighthly. That the principal sudder ameen having awarded damages on account of danshayree of the haut, contrary to law in the amount of loss, and his having considered the new haut of Mohesh Chuckerbuttee as the benamee property of the appellant, is an unjust decision; that the plaintiffs have not made the said Mohesh Chuckerbuttee, a defendant in the case; and until he is so made and the fact of the namee or benamee be first decided, the right of damages cannot be awarded.

Ninthly. The principal sudder ameen having considered the kuddum trees, which the witnesses for the appellant proved to belong to the thannah, as trees in the ground of the garden in dispute, without first instituting a local enquiry, is also an unjust decision.

Tenthly. The principal sudder ameen has on conjecture declared a large sum of money on the evidence of tutored witnesses for the plaintiff, on account of the quantity and value of mangoes and trees and their branches, without a local enquiry having first been made.

Eleventhly. That Mr. Ledly had previously rented the autchulla with house and other lands at the rate of eleven rupees, four annas, subsequently to which Lala Tarachand Darogah occupied the said autchulla alone at four rupees; that notwithstanding these facts are mentioned in the nuthee of the case, the principal

sudder ameen has fixed the rate of rent of the said autchulla at rupees eleven, annas four.

Twelfth. The principal sudder ameen having decreed only a part of the amount claimed by the plaintiffs and saddled the appellant with the whole of the costs, his decision is manifestly unjust.

After the admission of this appeal, the appellant filed four precedents, one dated the 6th day of December 1798, No. 72, one dated the 13th day of March 1847, No. 743, one dated the 10th day of February 1846, and one dated the 15th day of June 1846, on the perusal of which and the whole of the papers of the original suit and this appeal, together with the decision of the principal sudder ameen, the aforesaid precedents do not appear to me to apply to this case, because the haut not being disputed there was not any necessity to make Mohesh Chuckerbuttee a defendant, to prove which the precedent No. 743 is filed. The respondents claim the loss they have sustained in their haut, the vendors, who frequented it, having been forced by the police to leave it, the old haut, and to go to the new haut, therefore the precedents dated the 10th day of February 1846, and the 15th day of June 1846, are not applicable to the point. The respondents being in possession of the property in dispute, and there not being any dispute between Dubbeerooddeen and the plaintiffs regarding the said property, the precedent No. 72 is in like manner of no use to the appellant. The plea of the appellant to Russeedooddeen being a minor, cannot now be admitted, he, the appellant, not having noticed that point in the court of first instance. As it appears that the appellant had, contrary to the provisions of Regulation I., 1824, cut down the trees, no person except himself, and certainly not the Government, should make good the damages incurred by his act. The objections of the appellant stating that the principal sudder ameen, after having stated in his decision that the plaintiffs are not entitled to rent for the autchulla, and afterwards decreeing rent in the favor of the plaintiffs, appear to be contrary to the meaning of the decision of the principal sudder ameen. The twelfth objection urged by the appellant to being saddled with all the costs by the principal sudder ameen is inadmissible, for the conduct of the appellant has been so oppressive and tyrannical as appears in these proceedings, I consider the principal sudder ameen has justly saddled the appellant with all the costs. Under these circumstances, and the grounds of his decision having been so fully detailed by the principal sudder ameen, in all of which I entirely concur, I consider the decision passed by the principal sudder ameen, on the 11th day of August 1848, to be quite correct and just. I deem the objection of the appellant frivolous and vexatious. I therefore dismiss this appeal, and confirm the decision of the principal sudder ameen.

The costs of this court are to be paid by each party respectively, as some of the respondents appeared unsummoned.

ZILLAH MIDNAPORE.

PRESENT: W. LUKE, ESQ., JUDGE.

THE 19TH MARCH 1850.

No. 49 of 1849.

*Appeal from a decision of the Moonsiff of Bugree, Sreenath Bhooya,
dated 16th January 1849.*

Kumul Mudduck, after his decease, his son and heir, Surroop Mudduck and others, (Plaintiffs,) Appellants,

versus

Doorgapershad Singh and others, (Defendants,) Respondents.

THIS is an action for damages for losses ensuing from illegal attachment, laid at Company's rupees 115-8. The plaintiff states that he cultivates 11 beegahs of lakhiraj land, belonging to one Kenaram Gossein, and 5 beegahs of shewutter land belonging to Rughoonath Bhuggut, that the defendant Doorgapershad Singh sued out an attachment against one Bungsee Bagdee for balance of rent, on account of the year 1253 Umlee, and distrained plaintiff's crops, and caused them to be sold.

The defendant pleads that the lands which plaintiff designates as lakhiraj are part of his mal property, that when defendants discovered that plaintiff cultivated the 5 beegahs of land, which he (plaintiff) states, belongs to Rughoonath Bhuggut, he caused him to be served with a notice under Regulation V. of 1812, to enter into engagements for a lease; the plaintiff neglecting to appear, a settlement was concluded with Bungsee Bagdee, and on his default his crops were attached and sold.

The moonsiff nonsuits the plaintiff, the suit in its present form not being cognizable. The dispute, he observes, is evidently whether the land is lakhiraj or mal, and until that point is settled it cannot be decided whether plaintiff is entitled to damages or not.

I concur in this view of the matter. The cultivator has no doubt been induced to bring the suit in its present form in the hope of saving expense, as, in the event of his recovering damages, the decision would have carried with it a declaration that the land was lakhiraj.

The appeal is dismissed with costs, and the moonsiff's decision affirmed.

THE 19TH MARCH 1850.

No. 122 of 1849.

*Appeal from the decision of the Moonsiff of Bugree, Sreenath Bhooya,
dated 17th April 1849.*

Kaseenath Pal, (Defendant,) Appellant,

versus

Gudadhur Dutt, (Plaintiff,) Respondent.

THIS is an action for a bond debt, laid at Company's rupees 15-12-2.

The plaintiff represents that in 1255 Pergunnatee, the defendant borrowed eleven rupees in cash and a certain quantity of dhan seed, for which he executed a bond to pay in kind in the month of Poos following; in failure thereof, plaintiff now sues.

The defendant denies the claim, and pleads that it is preferred to gratify revenge.

The moonsiff decrees for the plaintiff, with certain deductions. The testimony of the attesting witnesses, which there is no reason to doubt, the signature of defendant on the bond, which corresponds with that on his vukalutnama, and the absence of all proof of enmity on the part of defendant, are, he observes, all circumstances corroborative of the justness of plaintiff's claim.

In appeal, defendant reiterates what he urged below, and pleads that the plaint and replication are at variance, and that the evidence of the witnesses is conflicting and contradictory. The first plea, however, is erroneous, and as regards the second, the evidence is not at variance upon any points that are material to the issue of the case. I see no grounds for interfering with the orders of the lower court, further than to direct that the claim be adjusted strictly with regard to the terms of the bond.

The appeal is dismissed, with costs.

THE 19TH MARCH 1850.

No. 136 of 1849.

*Appeal from a decision of the Moonsiff of Midnapore, Gunga Gobind
Surbadhiary, dated 28th April 1849.*

Madhub Chunder Mujoomdar, (Plaintiff,) Appellant,

versus

Beeroo Mundul, (Defendant,) Respondent.

THE plaintiff sues for a bond debt for rupees 15-12, bond bearing date 20th Chyete 1255 Umlee, to be redeemed in the month of Assar following.

The defendant denies the claim, and urges various pleas to show that enmity existed between himself and the plaintiff. The moonsiff remarks that the bond was written by one Keenoo Ram, son of Kanye Mytee, who is represented to be dead, and to have died in

Sawun 1255 Umlee, that Kanye Mytee denies he ever had a son of that name, and his testimony is affirmed by other witnesses, that his son's name is Beckoo Mytee, and that he died in Kartick 1255 Umlee. The moonsiff further observes that the isumnuveesee, or list of witnesses cited by plaintiff, was filed 20th February 1850, corresponding with 11th Phalgun 1256; if therefore Keenoo Ram was dead, as stated by the witnesses, plaintiff must have been aware of the circumstance, as he resides in the same village, and his motive in inserting his name must have been fraudulent. He, the moonsiff, attaches no credit to the testimony of the attesting witnesses, who are illiterate, and gives a verdict for defendant.

In appeal, the plaintiff persists that Keenoo Ram is a son of Keenoo Mytee, and that the fact would have been established had the moonsiff made a local enquiry. On a review of the proceedings, I see no grounds for interfering with the moonsiff's decision. The truth of the claim rests entirely on the evidence of the attesting witnesses, which is too circumstantial to render its truth even probable. The appeal is accordingly dismissed, with costs.

THE 19TH MARCH 1850.

No. 41 of 1849.

Appeal from a decision of the Moonsiff of Pertabpore, Moulvee Golam Sobhan, dated 8th January 1849.

Bipropersaud Sana, after his death, his widow, Musst. Unopoorno,
(Plaintiff,) Appellant,

versus

Gudadhur Mundul, (Defendant,) Respondent.

THIS is an action for a bond debt, laid at Company's rupees 149-4. The bond bears date 18th Maugh 1251 Umlee, to be redeemed in the month of Assar of the same year.

The defendant denies the claim, and pleads that the terms of the bond are at variance with facts. In the bond it is stated that the loan was granted to meet the expenses of the marriage of defendant's son, whereas defendant's son was married in 1250, and consequently the reasons assigned for the loan in 1251 had then no existence. He further pleads that the plaintiff is the creature of one Ram Cumul Bhattacharge, with whom defendant is at enmity, who has instigated this vexatious and unfounded claim to annoy him (defendant.)

The moonsiff observes that the probabilities are strongly against the truth of the claim. In the first place, the stamp paper is endorsed to one Komol Gorye, who has no connexion with the present suit, 7 months and 26 days before the bond was drafted on it, and was supplied by the prosecutor, which is unusual in such cases. The defendant appears to be a man of some wealth and credit in the village in which he resides, and it is therefore unlikely he should

travel a distance of five coss, accompanied by the witnesses who attested the bond, to borrow the sum specified, when he could have raised the amount without moving from his own village, where there are many respectable mahajuns who would have lent the defendant money, had he required it. The facts, the moonsiff observes, are also opposed to the truth of the demand. The evidence is conclusive that the marriage of defendant's son occurred in 1250, and therefore the reason alleged in the bond for borrowing the money in 1251 is fictitious. The defendant's signature on the bond does not correspond with that on other documents filed by defendants, and finally that the attesting witnesses and the writer of the bond reside on Ram Cumul's property at a distance from the homes of both plaintiff and defendant.

On a careful review of the case, I coincide with the lower court. In addition to the good grounds assigned by the moonsiff for rejecting the claim, the evidence of the witnesses to the bond is totally incredible. The latter unanimously depose to the hour, the day, the month, and year of an occurrence which took place upwards of three years previous to their depositions, displaying a degree of accuracy beyond the power of the mind to conceive.

The appeal is dismissed with costs, and the moonsiff's decision affirmed.

THE 21ST MARCH 1850.

No. 154 of 1849.

Appeal from a decision of the Moonsiff of Nema, Mr. J. Snell, dated 21st May 1849.

Ram Behra, (Defendant,) Appellant,

versus

* Rughonath Doss Byragee, (Plaintiff,) Respondent.

THIS is an action for a bond debt, laid at Company's rupees 31-11.

The bond is dated 25th Sawun 1246 Umlee, for a certain quantity of dhan, to be repaid with interest in the month of Maugh 1247 Umlee. The defendants deny.

The moonsiff considers the claim established by the evidence of the attesting witnesses, and decrees accordingly. Of the parties whose names are affixed to the bond, one only can write or read, and that person is represented to have engrossed the bond. In his evidence he denies having written it or signed his name to it. The moonsiff places no reliance on his word; but his testimony appears to be entitled to as much credit as that of the other witnesses, who are quite illiterate and whose evidence carries with it improbability. This and other circumstances in the case warrant the conviction that the claim is altogether fictitious.

The appeal is accordingly decreed with costs, and the moonsiff's decision reversed.

THE 21st MARCH 1850.

No. 144 of 1849.

*Appeal from a decision of the Moonsiff of Culmijole, Syud Imjad Ullee, dated 23rd May 1849.*Mohun Pal and others, (Defendants,) Appellants,
versus

Bykuntnath Sing, (Plaintiff,) Respondent.

THE plaintiff sues for a bond debt, rupees 61-14—the bond bearing date 26th Assin 1251 Umlee, to be redeemed in the month of Chyte following.

The defendants deny, and plead that they have no knowledge of the plaintiff, who lives 8 ~~cos~~ distant, that the suit has been instigated by Hafizoodeen and others, who were cast in a suit for damages, which defendants instituted against them.

The moonsiff considers the claim proved by the evidence of the witnesses for the prosecution, and the absence of all proof of the pleas set up by defendants, and gives a verdict for the plaintiff.

From the records it appears that, on the 21st March, the moonsiff directed that the plaintiff and his witnesses, whose attendance had been reported on the 15th idem, were to be present in court to identify the defendants. The former failed to appear on a frivolous plea, and the latter on the 27th March, who had obeyed the summons, represented that they had waited for ten days without attaining the object for which they had come, and prayed for leave to depart, which was granted. On the 30th March, both parties were again summoned to attend, but defendants, on the plea of sickness, failing to comply, the suit was proceeded with, and terminated as before stated. The defendants had taken every means in their power to prove their first plea, viz.; that plaintiff was unknown to them and could not identify them, and the moonsiff, before deciding the case, should have given due weight to this circumstance, especially as the return of the peada of the court showed that the plaintiff's plea of absence in the first instance was untrue. The proof of identity was the more requisite, as the witnesses attesting the bond state that they never saw the defendants before or after the execution of the bond, though they could *then*, the day on which they gave their evidence, recognize them. Five years having elapsed since the date on which they swear they saw defendants, and then only for ten minutes, their power to identify could *not* have been acquired at that time, and the defendants' plea therefore, (neither unreasonable nor improbable,) that Hafizoodeen had brought plaintiff and his witnesses to defendants' village, whilst the suit was pending with a view to identify, was entitled to every consideration, but the moonsiff overlooked it altogether. The testimony of the witnesses attesting is, in my judgment, altogether unworthy of credit, and with reference to this and other circum-

stances of the case, I deem the claim to be unfounded, and preferred to serve malicious ends.

The appeal is decreed, with costs, and the moonsiff's decision reversed.

THE 21ST MARCH 1850.

No. 143 of 1849.

Appeal from a decision of the Moonsiff of Nema, Mr. Snell, dated 16th May 1849.

Binode Dass, (Defendant,) Appellant,

versus

Janokeyrahn Behra, son, and Narain Behra, brother of Gungadhur Behra, deceased, (Plaintiffs,) Respondents.

THIS is an action for a bond debt, laid at 32 rupees. The bond bears date 16th Assin 1247 Umlee, and was to have been redeemed in the month of Bysack of the same year.

The defendant denies and pleads that the claim is fictitious, and brought forward at the instigation of one Jankee Ram Doss, with whom he is at enmity. The moonsiff overrules all defendant's objections, and, considering the plaintiff has proved his case, gives a verdict accordingly.

There are several circumstances in this case, which have either escaped the attention of the moonsiff, or which he has failed to notice. It is from these circumstances that the probabilities of the truth or otherwise of the claim are to be inferred. It appears that the bond was given to Gungadhur, deceased, ten years prior to the institution of this suit, on the 18th September 1848. The deceased took no measures to recover his money, nor did his heirs till the date quoted; and it is an extraordinary coincidence that there is only two days' difference between it, and that on which the defendant filed a summary suit, viz., on the 16th September 1848, against Jankee Doss, the party with whom defendant is at issue, to set aside an illegal distraint made under Regulation V. of 1812. Two of the witnesses in behalf of the present plaintiff are identical with those who gave evidence in favor of Jankee Doss in the summary suit, and the presumption is warranted that Jankee Doss is, in some way or other, a party to the present action, as stated by the defendant. Again, the bond has all the appearance of having been drafted long subsequently to the purchase of the stamp paper, which was evidently creased and discolored before the deed was engrossed on it. The evidence of the witnesses is minute and circumstantial to a degree, as to render it altogether unworthy of credit. I can come to no other conclusion than that the claim is an unfounded one, and that it has been brought to serve a malicious purpose.

The appeal is accordingly decreed, with costs, and the moonsiff's decision set aside.

ZILLAH NUDDEA.

PRESENT: J. C. BROWN, ESQ., JUDGE.

THE 8TH, MARCH 1850.

No. 92 of 1846.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 25th April 1846.

Rai Kissoree Dossee, mother of Chunder Seekur Bhowannee, a minor,
(Plaintiff,) Appellant,

versus

Radhamunee Dossee, mother and guardian of Hurrish Chunder Pall, a minor, and Kallee Purshun Paramanick and Rutten Munce Dossee and Gungapurshad Ghose, (Defendants,) Respondents.

THE plaintiff was a creditor of Radha Binnode Pall, the deceased husband of Radhamunee Dossee, and father of Hurrish Chunder Pall, a minor.

Her plaint sets forth that Radha Binnode Pal, on the 19th of Maugh 1246, deposited Company's rupees 303 with Gungapurshad Ghose, as earnest money for a durputtunee tenure, and, on the 2nd of Jeyt 1248, he paid the further sum of 550 rupees, making in all 853 rupees, for which he obtained an acknowledgment (hath chittha;) and that, on the 30th of Sawun 1248, he again deposited 2,000 rupees, for which he had no acknowledgment, and subsequently on the 2nd of Poos 1249, he gave her a draft on the said Gungapurshad Ghose, together with the said acknowledgment for the above sums, amounting to 2,853 rupees, which were presented to Gungapurshad by her manager or agent, Ramrutten Paramanick, but Gungapurshad postponed the payment from time to time; that in the meanwhile Radha Binnode Pall, her debtor, died, on which she prosecuted his heirs, and obtained a decree, and took out execution, and applied for an attachment of the money in Gungapurshad's hands, amounting to 3,567 rupees.

As Gungapurshad demurred paying the money in liquidation of Radha Binnode Pall's debt, on the grounds that the money was deposited with him for and in behalf of Kallee Purshun Paramanick,

the plaintiff was obliged to bring this suit against the heirs of Radha Binnode Pall, Kallee Purshun, his grandmother Rutten Munnee, as she was his guardian, and Gungapurshad Ghose, for the money which, she states, the last named person had in deposit belonging to Radha Binnode Pall, and which he had assigned over to her in his life time, when he gave her the burrat, and the acknowledgment for 853 rupees, alleged to have been granted by the said Gungapurshad.

The principal sudder ameen has dismissed her suit, after deciding on two points: first, whether the money in Gungapurshad Ghose's hands was belonging to the estate of Radha Binnode Pall or not; second, if the plaintiff had a right to have it paid her on account of her decree, as belonging to the estate of her debtor.

I do not think it was necessary for him to look to those points: first, but to decide upon the grounds of the plaintiff's suit. She has stated that Radha Binnode Pall gave her a certain draft on Gungapurshad Ghose, which she could not get him to honor. Yet when she prosecuted the heirs of her debtor, she did not mention so important a point, nor did she apply to have the money in his hands attached until her case was decided, nor did she produce the draft or Gungapurshad's notes of hand as part of the evidence of her claim.

I therefore doubt the existence of those documents at the time she prosecuted; and as she did not prosecute till nearly a year after Radha Binnode's decease, he could not have given them to her.

So far I think she has not proved the grounds upon which she has brought this suit for a lien on the money in Gungapurshad's hands.

Regarding the money, I cannot help believing that there has been some trickery and connivance between the heirs of Radha Binnode, the original debtor, Gungapurshad Ghose, and the grandmother of Kallee Purshun; for the money appeared in Gungapurshad's books originally in Radha Binnode's name, but, during the trial of the plaintiff's (appellant's) original suit for her claim on the estate, they have managed, by a decree of court passed on an amicable arrangement and by a registered receipt, to make out that it never belonged to Radha Binnode.

Under these circumstances, I do not see any reason to alter the principal sudder ameen's decree. The appeal is therefore dismissed, with costs against the appellant.

THE 9TH MARCH 1850.

No. 66 of 1847.

Regular Appeal from a decision passed by Baboo Ramlochun Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 19th of March 1847.

Kallee Shunkur Nundee and others, (Plaintiffs,) Appellants,
versus

Mr. William Storm and others, (Defendants,) Respondents.

THE plaintiffs instituted this suit for the recovery of balances of land rent for certain lands within a defined boundary, which they alleged were due for the years 1249, 1250, and 1251 B. Æ.

The plaintiffs held a kuboolcut executed by the former proprietor of the Banundie concern (Alexander MacArthur,) for the lands in question, the term of which expired with 1249 B. Æ., in which kuboolcut it is covenanted that the lands being liable to loss and gain, they are to be measured every year, and the rent adjusted by the quantity ascertained to have been held by the tenant. This, it appears, was regularly done up to 1250, and only a portion of the rent being paid, the balance is now sued for.

The evasive answer given by the defendant, as he is the *locum tenens* of Mr. MacArthur, is frivolous and inadmissible. He is undoubtedly answerable for the rent up to the last day of the lease, on the terms of the kuboolcut, and for every subsequent year that he has held the lands in possession; and it was incumbent on the principal sudder ameen to have caused a local investigation, together with measurement of the lands within the boundaries declared in the kuboolcut, before he decided the case. As it is, he has decreed according to the defendants' admissions, instead of being guided by the merits of the case. The decree having been passed without sufficient investigation with reference to the points at issue, I annul it, and remand the proceedings to the principal sudder ameen, with orders to restore the suit to its original number on his file, and, with reference to the above remarks, to re-investigate it fully, and then decide it on its merits.

THE 18TH MARCH 1850.

No. 11 of 1847.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 10th of December 1846.

Suroopchunder Sircar Chowdhuree, after his decease, Bindrabun Sircar Chowdhuree and Sreeshchunder Sircar Chowdhuree, as his heirs, (Plaintiffs,) Appellants,

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versus

Rajah Nurhurree Chunder Rai, and Srihurree Chunder Rai, and Jai Hurree Chunder Rai, and Ummarnath Bhuttacharge, the heir of Nund Coomar Bhuttacharge, deceased, and Bhogoo Mune Debia, mother of Mohanund Mookhoorjea and Radhikanund Mookhoorjea, minor sons of Govind Jeebun Mookhoorjea, deceased, and Mr. James Hills, and Gorachand Turruffdar, his gomashita, (Defendants,) Respondents.

THIS suit was brought by the original plaintiff for the recovery of 72 beegahs of land and the mesne profits accrued therein, under the following circumstances:

In 1189 B. *Æ.*, Rajah Ishan Chunder Rai, the father of Nurhurree Chunder Rai, possessed 72 beegahs of birt lands in a village named Pabakhallee, of which he gave 31 beegahs at his father's sradh to Rughoo Ruttun Biddya Panchanun, and in 1194 B. S. he gave the remaining 41 beegahs of land to his nephew Sussee Bhoosun Rai as birt. On the 6th of Maugh 1222, Sussee Bhoosun Rai sold the said 41 beegahs to Gobind Jeebun Mookhoorjea, and on the 7th of Phalgun 1228 the plaintiff purchased it from him and got possession, and afterwards, when Rughoo Ruttun Bhuttacharge died, the plaintiff purchased the 31 beegahs he had possession of, from his son, Nund Coomar Bhuttacharge, and remained in undisturbed possession of both parcels of land till 1242, when Mr. James Hill and his servant, Gorachand Turruffdar, with the connivance of Nurhurree Chunder Rai and other sons of Ishan Chunder Rai, put him out of possession, upon which he resorted to the criminal court, but, on account of there being some probability of an amicable adjustment, the plaintiff allowed the suit to be struck off the file on the 3rd of June 1836; after which he was about to institute a suit in the civil court, but the land was attached by the revenue officers for settlement under Regulation II. of 1819, and it was settled for with Rajah Nurhurree Chunder and others. The plaintiff admits that he did not prefer any claim to the land to the settlement officer, but that he does not consider to bar his right to the land, which he claims by right of purchase.

The plaintiff has so bad a case that there is no necessity for entering into the defence of the opposite party.

The principal sudder ameen has divided the grounds he had for dismissing the plaintiff's suit into seven heads, in a very prolix manner.

The appellant has, in a very lengthy petition, appealed from the decree, but has not suggested in it any point on which a doubt can arise as to the justness of it.

After due consideration of the case, I see no grounds for altering the principal sudder ameen's decision, for the following reasons :

First—There is no proof adduced by the plaintiff (appellant) that the 72 beegahs of land he claims were granted to Rughoo Ruttun Bhuttacharge and Sussee Bhooosun Rai, by Rajah Ishan Chunder Rai.

Second—There is no proof that the said grantees were ever in possession of the grants—the evidence of the witnesses for the plaintiff being, for the reasons recorded in the principal sudder ameen's decree, very unsatisfactory.

Third—The irreconcilable discrepancies in the plaintiff's statement to the magistrate, when he instituted his suit under the provision of Act IV. of 1840, and what he has stated in the pleadings in his civil suit.

Fourth—The plaintiff's reason for dropping the suit under Act IV. of 1840 is most unsatisfactory, as well as the way in which he has endeavoured to account for not preferring any claim to the lands, to the settlement officer, when they were resumed under Regulation II. of 1819, and when he allowed the settlement to be concluded with Nurhurree Chunder Rai and others, without offering either opposition or objection.

Concurring (as I do for the reasons stated above) with the principal sudder ameen that the plaintiff has not proved his claim, and seeing no reason for altering the decision appealed from, under the provisions of Clause 3, Section 16, Regulation V. of 1831, I confirm the decree, and dismiss the appeal.

THE 21ST MARCH 1850.

Case No. 67 of 1847.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose, Principal Sudder Ameen of Zillah Nuddea, on the 20th March 1817.

Luckhee Kallee Dasse, and after her demise, her son, Sureish Chunder Sircar, (Plaintiff,) Appellant,

versus

Maharajah Sreesh Chunder Roy Bahadoor and Juggurnath Dutt Bulhurrie Mullick, and others, (Defendants,) Respondents.

THE plaintiff sued to obtain possession of 44 beegahs and 2 biswas of birt land, situated in mouzah Kishengunge, which, she alleges,

she took in puttunee from Maharajah Sreesh Chunder Roy Bahadur, on the 5th of Assin 1251, corresponding with the 18th September 1844, when, she says, she obtained proprietary possession by the usual mode of putting a bamboo into the ground. The deed was duly registered; but as the land was farmed to Bulhurree Mullick, from 1250 to 1254, she only received the rent from him. On the 27th of January 1845, corresponding with the 15th of Maugh, Juggurnath Dutt prosecuted Bulhurree Mullick, and Surroopchunder Sircar Chowdhree, and the plaintiff in this suit, under the provisions of Act IV. of 1840, for disturbance of his possession, which he had by virtue of a mowroosce, or hereditary pottah, granted him by the late Maharajah in 1235, since which he has been in possession, and he obtained a decision in his favor, to reverse which, and to regain possession, the plaintiff has brought this suit.

Juggurnath Dutt, the defendant, answered that, on the 26th of Sawun 1235 B. Æ., corresponding with the 9th of August 1828, he obtained a pottah in perpetuity for 45 beegahs of birt land from the darogha of the Thakoor Barree, named Sham Nath Mookhoorjea, who was a servant of the late Maharajah; that in 1250, Surroopchunder Sircar endeavoured to oust him under pretence that Bulhurree Mullick (who was father-in-law of one of his sons) had taken a lease for five years of the land. He then gave a petition to the magistrate, who issued orders to the police to take care and keep the peace. In January 1845, he brought his complaint before the magistrate a second time, in which Bulhurree Mullick, and the present appellant, Luckhee Kallee, were included amongst the defendants, when it was taken up under Act IV. of 1840, and decided in his favor.

The principal sudder ameen has recorded as his opinion that the pottah, under which the defendant claims his right to keep possession of the land in perpetuity, is not an admissible deed, because it was not granted by the actual birtdar; but by a servant, and there is no proof that the servant had any authority to grant it, or that it was granted with the cognizance of the birtdar; but that it is clear from the dakhilas or receipts for rent, filed by the defendant, that the defendant had, for a continued period of upwards of 12 years, been paying rent for the land to the maharajah, which proved that his possession of them had been undisturbed for more than 12 years, and it cannot therefore be disturbed now by the plaintiff, who wants to obtain actual possession of it as her puttunee. He therefore considers that the defendants cannot be deprived of his right to cultivate the land, and that the birtdar, or his *locum tenens*, has only a right to a fair rent for the lands claimed. He therefore dismissed the plaintiff's claim, and decreed all the costs against her.

From this decision both parties have appealed; the plaintiff because her suit has been dismissed, and the defendant because the principal sudder ameen has recorded that the pottah, under

which he claims the occupancy of the lands in perpetuity, is inadmissible.

I concur with the principal sudder ameen in the view he has taken of the case. The whole dispute appears to have been caused by Surroopchunder Sircar, as it is only he and his connections who have opposed the defendant.

The rajah, in a petition given in by him in this case on the 27th of February 1847, denies the right of Sham Chunder Mookhoorjea to grant such a pottah as that exhibited by the defendant Juggernath Dutt, but has carefully avoided every thing in favor of the plaintiff's claim.

Under the above circumstances I confirm the principal sudder ameen's decree, and dismiss the appeal.

THE 21ST MARCH 1850.

Case No. 68 of 1847.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 20th of March 1847.

Juggurnath Dutt, Khosal Chunder Dutt, and Nehal Chunder Dutt,
(Defendants,) Appellants,

Lukhee Kallee Dossee and Maharajah Sreesh Chunder Roy Bahadoor, (Plaintiffs,) Respondents.

THE whole of this case and the grounds for the decision of it have been fully detailed in No. 67, decided this day.

The appeal in this number appears to me to be frivolous, because the appellant is not dissatisfied with the principal sudder ameen's decree, but with the mention he has made of the deed upon which he bases his claim to occupy the lands in perpetuity. If the person, who granted the pottah, had no right to grant it, he committed a fraud, and the appellant connived at, and was an accomplice in, that fraud, and, therefore, his having been in possession for more than twelve years will not be in his favor, if the validity of the pottah should be enquired into.

The principal sudder ameen's decree, which, according to the wording of it, only has reference to the plaintiff's claim to actual possession, which has, for the reasons stated in it, been dismissed, which is quite sufficient, and he passed no order regarding the mourósee pottah.

I therefore dismiss this appeal, with costs.

THE 28TH MARCH 1850.

Case No. 119 of 1849.

Regular Appeal from a decision passed by Baboo Gopeenath Bose, Moon-siff stationed at Santipore, on the 16th of November 1849.

Punchcowree Dabee and others, (Plaintiffs,) Appellants,

versus

Oomeish Chundur Roy and others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiffs for the reversal of a summary decree passed by the collector, awarding interest on arrears of rent, which arrears not being disputed, this suit was only brought to recover the interest which, the plaintiffs said, they had been illegally called upon to pay. The interest awarded in the summary suit amounted to rupees 17, annas 12, of which the moon-siff disallowed rupees 4, annas 5, gundahs 12, leaving a balance of rupees 13, annas 6, gundahs 8, which he decreed against them, and from which order they have appealed, on the grounds that interest was not claimable till the close of the year.

The appellants' objection to pay interest on the several instalments as they fell due, is frivolous, as in the first place they purchased the title of the former durputneedar, and in that kubooleut it was contracted, that the interest for the instalment of rent for one month was to be due from the 1st of the following month, and in the second place, summary decrees have, on several occasions, been passed for arrears of rent against them, and they never objected to paying interest on the instalments which were over due till now.

I am of opinion that the moon-siff's decision is perfectly consistent with the decrees formerly passed for preceding years, and with Clause 5, Section 15, Regulation VII. of 1799, and no good grounds having been shown by the appellant to alter it, I therefore confirm it, with full costs against the appellants, whose appeal is dismissed.

THE 28TH MARCH 1850.

Case No. 115 of 1849.

Regular Appeal from a decision passed by Baboo Gopeenath Bose, Moon-siff of Santipore, on the 16th of November 1849.

Ramnarain Chattoorjeah and others, (Defendants,) Appellants,

versus

Oomeish Chunder Rai and others, (Plaintiffs,) Respondents.

THIS suit was first instituted before the collector under the provisions of Regulation VII. of 1799, for arrears of rent, and the interest, which had accrued on the instalments, amounting in all to rupees 137, annas 5, of which rupees 136, annas 2, pie 10 were principal; and rupee 1, annas 2, pie 2 was the amount of interest.

The appellants deposited the sum claimed, and under the provisions of Section 15, Regulation VIII. of 1831, the collector forwarded the suit to this court, for the purpose of its being disposed of with another suit, regarding the same matter which was pending in the court of the moonsiff at Santipore, which suit has been decided with this, and also appealed and decided by me this day (*vide* case No. 119.)

This appeal is preferred for the sum of annas 8, gundahs 14, cowree 1, which is the amount of interest awarded by the moonsiff against the appellant for arrears of rent. The appellant states that no kist-bundec or kubooleut has been filed by the putneedar, and that the interest is not chargeable during the year. The putneedar has filed the former durputneedar's kubooleut, in which it is specified that interest was to accrue from the first of one month if the rent for the former remained due. The defendants, having purchased the rights of the former durputneedar, are clearly liable; and besides, summary decrees have, from time to time, been passed for the arrears and interest, when the rent has been due, and no objection has been made by the defendants till now.

Under these circumstances, I am of opinion that no good reason has been shown by the appellant for altering the moonsiff's decree, which is in conformity with former decrees and with Clause 5, Section 15, Regulation VII. of 1799, and in consistence with justice. There is no occasion, as provided for in Clause 3, Section 16, Regulation V. of 1831, to summon the respondent.

Ordered, that the appeal is dismissed, the moonsiff's decree confirmed, and notice of this decision is to be given to him, as provided for in the Clause last alluded to.

THE 28TH MARCH 1850.

Case No. 116 of 1849.

Regular Appeal from a decision passed by Baboo Gopeenath Bose, Moonsiff stationed at Santipore, on the 16th of November 1849.

Ramnarain Chatterjea and others, (Defendants,) Appellants,

versus

Oomeish Chunder Roy and others, (Plaintiffs,) Respondents.

THE facts and circumstances of this case are similar to those recorded in case 115, decided this day. The same order is therefore passed.

The appeal is dismissed, the moonsiff's decree is confirmed, of which intimation is to be given to him, as provided in Clause 3, Section 16, Regulation V. of 1831.

THE 28TH MARCH 1850.

Case No. 117 of 1849.

Regular Appeal from a decision passed by Baboo Gopeenath Bose, Moonsiff stationed at Santipore, on the 16th of November 1849.

Ramnarain Chatterjea and others, (Defendants,) Appellants,

versus

Oomeish Chunder Roy and others, (Plaintiffs,) Respondents.

THE facts and circumstances of this case are similar to those recorded in case 115, decided this day. The same order is therefore passed.

The appeal is dismissed, and the moonsiff's decree is confirmed, of which intimation is to be given to him, as provided for in Clause 3, Section 16, Regulation V. of 1831.

THE 28TH MARCH 1850.

Case No. 118 of 1849.

Regular Appeal from a decision passed by Baboo Gopeenath Bose, Moonsiff stationed at Santipore, on the 16th of November 1849.

Ramnarain Chatterjea and others, (Defendants,) Appellants,

versus

Oomeish Chunder Roy and others, (Plaintiffs,) Respondents.

THE facts and circumstances of this case are similar to those recorded in case 115, decided this day. The same order is therefore passed.

The appeal is dismissed, and the moonsiff's decree is confirmed, which is to be intimated to him, as provided for in Clause 3, Section 16, Regulation V. of 1831.

THE 30TH MARCH 1850.

Case No. 76 of 1847.

Regular Appeal from a decision passed by Baboo Ramlochun Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 7th of April 1847.

Mirtenjai Pandhee, (Plaintiff,) Appellant,

versus

Gopal Goledar, son and heir of Dowcowrie Goledar, (Defendant,) Respondent.

THE plaintiff sued to establish his right to assess certain lands, which he declared the defendant had in his occupancy, amounting to 354 beegahs and 11 cottahs, the rent of which in Company's rupees was 564, 5 annas, 2 pie.

The defendant pleaded that he had a pottah for the lands he held, which were not more than 197 beegahs and 7 biswas, the rent of

which amounted to 77 rupees, 10 annas, which pottah was dated the 3rd of Kartick 1209 B. Æ. After some time Nilcomul Pal Chowdhree and others, the grandsons of the zemindars, took from his father 15 rupees, 6 annas, and 19 gundahs, in excess of the fixed rent. They were accordingly sued, and a decree was obtained against them. They appealed, and on the 9th of Bysakh 1232 B. Æ., their appeal was dismissed, and they were told that, if they considered the pottah exhibited by the defendant's father was false, they might prosecute him and have it cancelled. This they did not do, but took a kubooleut from the defendant's father for 106 rupees, and 16 rupees extra, which, on his suing them, was rejected. They appealed and again lost their case, and after that they gave up the claim, since which there has been no claim brought against the defendant or his father, and the plaintiff's suit is now barred, having exceeded the limited period allowed.

The plaintiff urged that the defendant's statement was all false, that there is no limited period for bringing suits for right to assess, and that he was ready to prove his rights.

The principal sudder ameen, after recording the points at issue, stated that the only point to be decided was, whether the proprietor of the land had a right to demand more rent from the defendant than was stated in the pottah which the defendant holds?

He then proceeded to give three reasons why the plaintiff had no right to claim more rent, all of which, from the fact of the total want of satisfactory investigation, are wrong.

The plaintiff gave in the names of twenty-four witnesses to prove his claim, but the evidence of only two was taken. The plaintiff sets forth in his plaint, that the defendant had, by actual measurement, much more land than the alleged pottah allowed. This the principal sudder ameen has not enquired into, though it ought to have been the subject of local investigation. He has also dismissed the plaintiff's suit as exceeding the limit allowed by law, but he was well aware, and there are some of his decrees extant to prove that he knows, that it has been ruled by the superior court, that there is no limit of time to the institution for suits for assessment; and under these circumstances I think the decision he has passed in this case is highly discreditable to him.

Being of opinion that the suit has been decided without due investigation, and that it has been dismissed on insufficient and erroneous grounds, I return the case to its former place on the principal sudder ameen's file, and he is directed to make a full and satisfactory investigation, and to decide the plaintiff's claim on its merits.

The amount of stamp for the appeal is to be returned to the appellant, whose costs will be awarded, as may appear just, when the case is finally disposed of.

The respondent, having voluntarily appeared by a vakeel, is to pay his own costs.

ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, ESQ., JUDGE.

THE 6TH MARCH 1850.

No. 11.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, on the 5th February 1849.

Juggurnath Suhae, (Defendant,) Appellant,

versus

Radha Beebee, guardian of her minor son, Luchmun Pershad, heir of Boolakee Lall, (Plaintiff,) Respondent.

PLAINTIFF, having obtained a summary decree in the collectorate against the defendant for the arrears of rent of an estate farmed by him, after the lapse of nearly ten years from its date brought this suit to recover the amount, viz. rupees 157-3-9, or Company's rupees 163-4-6, with interest, amounting to Company's rupees 188-13-3, on the ground that she could not, according to law, bring the real property of the defendant, other than the subject of the farm, to sale, in execution of the said decree.

The principal sudder ameen's decision lays down two points for adjudication, viz., first, whether real property can or cannot be sold in execution of a summary decree; and second, whether the defendant's objections to the justice of the summary decision are open to investigation and decision in this suit; and a decree has been passed in favor of the plaintiff for the amount sued for, after adjudicating these two points solely.

The appellant appeals on the ground that no notice was taken by the principal sudder ameen of two other objections urged by him in his answer, and which I find, on examination, to be therein contained. They are these—first, that plaintiff compromised the matter after the passing of the summary decree, engaging not to execute it, and so induced him to abandon his intention of instituting a regular suit to get it annulled; secondly, that plaintiff having neglected to execute her decree, or to proceed otherwise for the recovery of the amount for so long a time, could not, according to law, claim interest, and in no case could she claim interest exceeding the principal sum claimed. These objections ought to have been investigated and disposed of. I therefore reverse the decision as incomplete, and remand the suit to be again tried with advertence to them. The value of the stamps will be returned to the appellant.

THE 12TH MARCH 1850.

No. 16.

Appeal from a decision by Rae Lala Shunkur Lall, Principal Sudder Ameen, on the 19th February 1849.

Munnoo Singh and others, (Defendants,) Appellants,

versus

Mr. J. Davidson, (Plaintiff,) Respondent.

SUIT laid at rupees 1,184-0-0, for recovery of an advanced payment of a year's rent of a lease, granted for the cultivation of indigo, together with the loss sustained by the ejectment of the plaintiff in the first year of the lease.

The plaintiff states that Munnoo Singh, and others of the defendants, gave him a lease and executed a deed of lease in his favor on 29th June 1846, taking one year's advanced rent for 75 beegahs of land in Paleekhass, and gave him possession; but on his first proceeding to sow indigo upon the lands, he was opposed by the defendant Mr. Betts, on the plea of a lease by the abovementioned defendants, who, denying plaintiff's lease, in concert with Mr. Betts, applied for the interference of the magistrate, and through it ejected him. He claims damages at twice the amount of the rent, for two years, according to certain precedents. The defendants, denying the execution of any lease in favor of plaintiff, assert the execution of one in favor of Mr. Betts, on the 9th July 1846, for 60 beegahs of land in Ramnath-poor Palee, which is the same mouzah as that which plaintiff calls Paleekhass, and the lands leased are a part of those for which plaintiff claims indemnification.

The principal sudder ameen, finding the plaintiff's lease proved by the document duly authenticated by the depositions of the subscribing witnesses, and seeing reason to believe, from a deposition of Jugunrath Singh, servant to Mr. Betts, wherein he stated the quantity of land in his master's lease to be 100 beegahs, that that lease was not in existence so early as its date indicated, and being also of opinion that even if it were, it could not be valid, and that its execution showed collusion between the parties to it, with a view to injure and defraud the plaintiff, gave judgment for the indemnification claimed, viz. calculated at an amount equal to twice the annual rent for two years, on view of the decision of the judge of Shahabad, dated 22nd February 1844, in a similar case, and the amount of remuneration claimed under similar circumstances by Mr. Betts himself, in a suit against the plaintiff, with interest and costs.

Munnoo Singh, Bhikaree Singh, Choonnee Singh, and Bhichook Singh, defendants, appeal against this decision, saying that, if Mr. Betts opposed the plaintiff and prevented him from sowing his indigo, they ought not to be held responsible; and secondly, that the plaintiff has not proved the amount of his loss, which he ought to have done.

Munoo Singh was the only one of the appellants, who defended the suit; the others can have no claim therefore to be heard in this court. With regard to the second plea, it is difficult to imagine how the plaintiff was to exhibit actual proof of his loss consequent on the fraudulent conduct of the defendants. He assigned the ground on which he claimed to recover compensation at a certain specific rate in his plaint; that was a precedent of another zillah court. It was incumbent on defendants, if they did not admit the principle, to combat it, which they did not: they cannot now do so in appeal. The punishment to which they have been subjected for a gross and fraudulent violation of contract, and abetting the same, is out of all proportion light in comparison of their delinquency, and the compensation adjudged to plaintiff, nothing beyond what is moderate and reasonable. I dismiss the appeal, and confirm the decision, without issuing notice to the respondent.

THE 13TH MARCH 1850.

No. 14.

Appeal from a decision passed by Rae Shunker Lall, Principal Sudder Ameen, on the 19th February 1849.

Bheekaree Singh and others, (Defendants,) Appellants,

versus

Kishoon Purshad, (Plaintiff,) Respondent.

SUIT laid at rupees 1,247-2-6, for possession of a $3\frac{1}{2}$ anha share of mouzah Jumeelpore Palee and an 8 anna share of Palee Dirghnath, by the annulment of a deed dated 21st Assin 1248 F.

The plaintiff stated that receiving a loan of 600 Sicca rupees from Byjnath, the ancestor of the defendants, he had leased to him the above and a share of Paleekhass, by deed of lease of 27th Poos 1231 F., and repaying the money, had received back the deed on the 9th Cheit 1253 F., and that when he subsequently leased out the property to Jutadharee Singh, the latter was kept out of possession by the defendants, by means of proceedings under Act IV of 1840, on the false pretence of a deed of lease executed in favor of Byjnath, the deed which plaintiff sues to have declared null and void. Defendants plead the genuineness of the deed of lease, which, they say, the plaintiff executed, receiving the sum of 1,051 rupees, out of which he paid off the first loan and received back his lease of 1231 F. cancelled.

The principal sudder ameen proposed for enquiry the following points, viz., whether the deed plaintiff sues to cancel is genuine, and executed under the circumstances stated by the defendant, or whether it is false and pretended, and the lease executed in favor of Jutadharee genuine?

This case exhibits a disgraceful specimen of evidence of witnesses contradicting each other. Those brought into court by the plaintiff declared that they witnessed the repayment of the amount of the first loan, and the return of the cancelled lease on the 9th Cheit 1253 F. at Chupra. Those on the contrary, whose names appear as subscribing witnesses to the deed of lease, which plaintiff sues to declare forged, state positively that it was executed, and the old lease returned to the plaintiff, on the 21st Assin 1248 F., at Patna. Moreover each party produced a set of witnesses, who declare that those parties were at places others than those at which the opposite party asserts the cancelled lease to have been returned to the plaintiff, and the money to have been repaid at the dates alleged by each. The principal sudder ameen assigns several reasons for not believing the testimony of the witnesses on the side of the defendants, partly drawn from their statements, and partly from other sources, and therefore decrees the plaintiff's claim, with costs. The appeal endeavours to refute the reasons and arguments of the principal sudder ameen one by one.

For the following reasons I think that the principal sudder ameen has arrived at the right conclusion. First, it is evident that, as the defendants admitted the facts of a prior lease having been executed and cancelled, and the date of cancelment having become a question in consequence of their denial, it is for them to prove the true date, at the same time proving the date of cancelment recorded on the lease itself, to which, as well as to the acknowledgment of receipt of the money, their names and the names of witnesses are appended, to be a forgery: particularly now in appeal after those witnesses have been examined, and their testimony found by the lower court to be creditable testimony, in which, in spite of what has been urged by the appellants, I am compelled to concur. Accordingly, the defendants caused several witnesses to be examined in the lower court, whose names are subscribed to their alleged lease of 1248 F., who, if they are to be believed rather than the witnesses on the side of plaintiff, prove the forgery of the date of cancelment of the first lease, by proving that it was returned, not indeed with any endorsement acknowledging its cancelment, for that defendants themselves did not assert, but as understood to be cancelled, by payment out of the amount of a new loan contracted by plaintiff and secured by a new lease five years previous to plaintiff's alleged cancelment of the old one. It seems to be believed by the parties who bring this sort of witnesses into court, that the credit of Indian witnesses is so good, that it is only necessary for them to assert any thing, however monstrous, or unlikely, to be forthwith believed. It is necessary to teach such parties that the contrary of this rule is necessarily followed. Now in this case, the improbabilities of the statement of the defendants are very great. After a settlement of one of the mohals of the farm by the revenue authorities, by which its assessment to the revenue

was fixed so high as to increase the aggregate assessment of them all on the very day following, the ancestor of the defendants advancing rupees 451 in addition to what plaintiff already owed him, entered into a new engagement to pay Company's rupees 127-14-6, instead of Company's rupees 99-10-2, payable under the old lease; and the only reason for this unusual conduct in a money lender assigned by the appellants is his liberality, and the good terms on which he happened to be with the plaintiff. Second, it is improbable also, even if these circumstances were true, that plaintiff should not insist on the defendants' endorsing on the cancelled lease an acknowledgment of the receipt of the money on a certain date under their signatures. The cancelled lease bears such an endorsement, and to show that it is a forgery, defendants ought to have proved that it was given back without such an endorsement. Thirdly, the cancelled lease bears on it the proof of its having been filed in the deputy collector's office, prior to the settlement above alluded to; but the date of its return to the defendants, contrary to the usual custom, is not endorsed upon it: this of itself gives rise to the suspicion that it was returned after the date of the lease of 1248 F., but I find that, with a view to show that it was still on the proceedings of the deputy collector at that date, plaintiff exhibited the copy of an order of that functionary, forbidding the return of any original document, until orders should be passed in regard to the rival claims of the parties by the higher authorities, and of a second order dated 12th August 1839, granting a copy of the said lease on the application of the mokhtear of defendants' ancestor. Now supposing defendants' statements to be true, it would hardly have been difficult for them to have proved the return to their predecessor of the document, before the date of the lease of 1248 F.; and their failure to do so is presumptive proof that it was not in their possession till afterwards. Fourthly, it appears that the plaintiff from the year 1231 to 1253 F. made no attempt to evade his contract or contracts with the ancestor of defendants, and it is highly improbable that without any real right to assert, or injustice to complain of, and after the possession of the opposite side of 5 years' duration, under the new lease had been confirmed in the summary jurisdiction, the plaintiff, on the strength of the testimony of a few false witnesses to the date of return of a cancelled document, should risk, even if he could muster the expense of a law-suit, in the hope of disproving a *bonâ-fide* lease under which defendants had so long been in possession; and why if he determined upon so rash an undertaking, he postponed it for 5 years it is difficult to conceive. Fifthly, with the defendants the case is different. If the plaintiff's statement is true, no sooner had the time come for them, either to yield the estates or to retain them by a fraudulent stratagem, than they put it in practice, encouraged, if their own statement in regard to their possession is true, by the vantage ground which that gave them. They

had only to keep possession and put plaintiff to the proof of his rights in the civil court, trusting to the chance of his being unable to command the funds, they having the possession of the source of his means. If the plaintiff, however, was in possession, as, he asserts, that fact would be strong corroboration of his statement, and a refutation of that of defendants; but although from the defendants having originated the proceedings under Act IV. of 1840, it may be doubted whether they were in possession, yet as the magistrate and the sessions court considered it proved, perhaps it cannot now be called in question. Sixthly, there is a ground for deeming a fraud on the side of defendants probable, from the evidence of a fraud of similar nature on their part, exhibited in the proceedings held by the magistrate under the aforesaid act in this case, but committed on a different individual. The appellants, it appears from these proceedings, complained of the respondent and Mr. Davidson, an indigo planter, for disturbing their possession and that of their under-lessee, Mr. Betts, upon the lands of their farms, stating that, in consequence of a settlement of Paleekhass with the late rent-free holder, they had lost possession, but regained it by coming under engagements with that party, after which they under-let 85 beegahs in the three melials generally to Mr. Betts.

Mr. Davidson replied, stating that he held 75 beegahs in Paleekhass, including those claimed by Mr. Betts, under a prior lease from the complainants. Mr. Betts' possession being made out to the satisfaction of the magistrate, Mr. Davidson was compelled to sue for damages, and obtained a decree.

This case came before me in appeal; and, the appellants, the same parties as in the appeal under trial, no longer thinking it advisable to deny the lease granted by one of them to Mr. Davidson, objected to the decision on other grounds; the appeal was decided in this court yesterday, on the ground of fraud and abetting fraud being apparent on the part of the appellants. It is true that this decision not having been regularly brought before the court by the parties in evidence, it may not be altogether in accordance with the usual practice to allude to it. Great evils, however, require violent remedies, and I know not how perjury and subornation of perjury can ever be detected, if a slight deviation from form is never to be permitted in the search after the proofs of them. Besides all these reasons, I find those which the principal sudder ameen has drawn, from the evidence itself of the defendants' witnesses, to be very cogent, and that the appellants have utterly failed to refute them.

I am therefore convinced that the deed of lease, which the plaintiff seeks to annul as forged, is a forgery, and the subscribing witnesses perjured witnesses, and consequently that this appeal is utterly groundless and vexatious and precisely such as Regulation XIII. of 1796, Section 3, was intended to meet. I dismiss the appeal, confirm the decision without summoning the respondent, and sentence

each of the appellants, viz., Bhikaree Singh, Choonnee Singh, Bhichook Singh, and Munoo Singh to pay a fine of 500 rupees.

THE 27TH MARCH 1850.

No. 17. • •

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, on the 20th February 1849.

Sadut Allee, Feeda Allee, Hyder Hossein, and Oomritoon-nissa
alias Boo Jan, (Appellants,) Respondents,

versus

Lootf Allee Khan, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 448-13, for possession on certain houses stated to have been sold conditionally to the plaintiff, with house rent from the date of the deed of sale, on the ground of the sale having become absolute.

The plaintiff brought his suit in the first instance against Sadut Allee, Feeda Allee (both for themselves, and in the capacity of attorney with general powers on the part of Nijabut Allee) Imam Allee, Hyder Hossein, son of Tarufoonnissa (seller), and Bunnoo Jan, stating that they received from him the sum of rupees 350, and executed in his favor a deed of conditional sale to become absolute or to be annulled, on non-payment or payment of the price within one year from the date of sale; and these persons, with exception of Hyder Hossein, appear with Tarufoonnissa to be named, in the capacities also above mentioned, in the deed as the sellers. The signatures, however, on the deed do not correspond exactly with the names of the sellers in the body of the instrument, being those of Sadut Allee, Feeda Allee, Imam Allee, and Bunnoo Jan, written by the pen of Imam Allee; Nijabut Allee, written by the pen of Sadut Allee, styled general mookhtear; and Tarufoonnissa by the pen of Sadut Allee. After issue of notice according to the plaint, the plaintiff moved the court by a petition in which Nijabut Allee is styled defendant, and Sadut Allee and Feeda Allee are no longer styled his mookhtears, to issue notice to Nijabut Allee as well as to the other defendants, personally. This petition, dated 30th November 1847, does not state the place of residence of Nijabut Allee. Nevertheless an order was passed conformably to the request contained in it, that notice should issue to the persons named on it as defendants, and one notice was issued to all, in which they are all styled inhabitants of Moghulpoorah.

In acknowledging the notice Sadut Allee in a separate receipt appears to have stated that Nijabut Allee lived in Lucknow and Bunnoo Jan had died at Cawnpore, leaving heirs living at Bans Bareilly. Subsequently on a verbal admission of plaintiff's vakeel that Nijabut Allee lived at Lucknow, he was directed by the court to state the

particulars of the locality, and eventually notices were sent to the resident of Lucknow, but could not be served on account of the defendant not being found at the locality indicated in the papers.

In consequence of this, plaintiff, in a petition, dated 21st December 1848, prayed for judgment in regard to the shares of the other defendants, excepting that of Nijabut Allee, for which he would sue separately when he could effect the service of the usual notice upon him. An order was passed upon this petition for striking out the name of Nijabut Allee from amongst the defendants, and for adjudicating the case independent of his share. Accordingly a decree has been passed, in which it is stated that plaintiff has entirely withdrawn his claim to Nijabut Allee's share of the houses, for possession on the remaining shares without any specification of their extent, and for rents from the date of the deed, on the grounds of the validity of the deed of conditional sale, and the foreclosure of the mortgage having been satisfactorily proved.

One of the grounds of the appeal is, that plaintiff having relinquished his claim to the share of Nijabut Allee, the sale cannot be said to have become absolute; that in fact plaintiff has changed the complexion of the transaction and made it one of simple mortgage! Another ground is that the principal sudder ameen, in his decree, has declared it to be proved that Bunnoo Jan was also called Boo Jan, whereas Bunnoo Jan is dead, and Boo Jan, a distinct person, is still alive, for which reason it is to be understood she, in appealing, styles herself defendant, though she is not so styled either in the pleadings or in the judgment of the decision, *albeit* it is mentioned in the reasons as above noticed, that Bunnoo Jan is also called Boo Jan. It is not necessary to notice the other pleas contained in the extremely prolix and confused *moojibat* of the appellants, because, for the following reasons I consider the fact, stated in the first mentioned plea, *viz.*, the exclusion of Nijabut Allee's share from adjudication, sufficient to vitiate the decision.

First, the decree is indefinite as regards the shares on which possession is adjudged, with back rents. *Secondly*, as plaintiff, in the petition praying for judgment exclusive of one share, intimates his intention to sue subsequently for that share, the decision is opposed to the express provisions of the Circulars of 30th September 1847 and 11th May 1839, prohibitory of the division of a claim and to the principle of the decision of the Sudder Dewanny Adawlut in the case of Sadhoo Lall and others *versus* Naeema Beebee and Enaet Ahmud, in Select Reports, vol. 3, page 159. *Thirdly*, it appears to me that plaintiff made this very questionable motion being left without alternative, by the omission of the principal sudder ameen to take the steps prescribed by Clause 3, Section 2, Regulation II. of 1806, towards the end, *viz.*, "the notice, if the suit be for land or other immovable property, shall be served on the defendant's agent, or representative in charge of such property," and by the misdirec-

tion of the principal sudder ameen in ordering notice to be served in a foreign state, where it was found impossible duly to serve it. Under these circumstances, I reverse the decision as contrary to established practice and rule, and otherwise imperfect, and remand the suit to the principal sudder ameen's court for re-trial. It will be the duty of the court to reject the prayer of the petition of 21st December 1848, and to call on the plaintiff to point out the agent or other party in charge of the share of Nijabut Allee in the property under litigation, and to issue notice to him according to law; and having done so, again to decide the suit on a full consideration of the merits in regard to the whole claim. The value of the stamps of the appeal will be refunded to the appellants.

THE 27TH MARCH 1850.

No. 207.

Appeal from a decision passed by Unnund Misser, Moonsiff of the City, on the 29th July 1848.

Jhoomuk Singh, (Defendant,) Appellant,

versus

Syud Ameer Allee, (Plaintiff,) Respondent.

SUIT for rupees 31, the value of a Cashmere shawl, &c.

The plaintiff stated that he borrowed from defendant the sum of rupees 25, pledging two Cashmere shawls, that he repaid the money with the interest, amounting to rupees 8 annas 4, to defendant, on his promising to return the shawls; that he sent Kamal Allee and Halim Buksh with defendant to receive them, but he restored only one, promising to give up the other on his return from the fair at Chutter.

Defendant answered that he got the amount for plaintiff from Ketroot Sahoo, (who also put in a petition in the moonsiff's court,) and the shawls were deposited with that person, who gave up one of the shawls on plaintiff repaying rupees 13, annas 2; rupees 12 being credited to him in the principal, and rupee 1 annas 3 in the interest, which amounted only to rupees 4 annas 12, at the time the payment was made, not, as plaintiff says, to rupees 8 annas 4.

The moonsiff decreed the value of the shawl, on the ground that plaintiff's witnesses had proved the repayment of the amount pleaded by him. Appellant objects to their credit, and contends that the retention of the shawl by the lender is proof sufficient of part of the debt remaining due, and that his witnesses proved plaintiff's acknowledgment of the amount of the balance. The respondent contends that the statement of his witnesses are unshaken by any thing adduced on the opposite side. I find the evidence of respondent's witnesses as might have been expected under the circumstances. They all relate the repayment of the money, viz., rupees 25 principal, and rupees 8 interest; but not one of them states himself to have been a witness of

the repayment. In short, as evidence of this fact, their statements are absolutely valueless, and the moonsiff is much to blame in permitting such vague statements to be made by witnesses in his court, without cross questioning them as to the source of their knowledge.

The respondent has failed to prove repayment of the money borrowed, and therefore he is not entitled to a decree for the restoration of the articles pledged. I therefore reverse the moonsiff's decree, and dismiss the suit, and adjudge respondent to pay all the costs in both courts, with interest to the day of payment.

ZILLAH SARUN.

PRESENT: H. V. HATHORN, ESQ., JUDGE.

THE 1ST MARCH 1850.

No. 17 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 28th April 1847.

Maharaja Nowul Kishore Singh, (Plaintiff,) Appellant,

versus

Hurrihur Dut Sahee and Retoraj Sahee, (Defendants,) Respondents.

CLAIM, for possession of 150 beegahs of land in tolah Belwa, mouzah Hitchapal, tuppeh Sathee, pergunnah Mujhowah, and for reversal of survey proceedings dated 2nd April 1845, &c., and summary orders of the joint magistrate of Chumparun, &c. Value Company's rupees 3,000.

This suit was instituted on the 25th September 1845. Defendants represent themselves to be the birtbars of Rajpoor and Muhoowa, villages situated at the extreme south of tuppeh Gopala; plaintiff's village Hitchapal is in tuppeh Sathee to the south of Gopala; and the disputed spot is a tongue of land in tuppeh Gopala running into tuppeh Sathee, which land is surrounded on the south, east, and west by the lands of Hitchapal; the two tuppelms being separated by the rivers Pundjee to the east and Ajwan (*alias* Amjanwan) to the south-west. A previous dispute appears to have arisen in 1241 Fussily, when the maharaja deputed two of his own people to arbitrate the case, and these two persons, viz., Heeralal and Jotiklal, (sons of the pergunnah canoongoe,) proceeded to the spot, and, in the presence of numerous witnesses, prepared a map of the disputed land, and submitted a report to the raja declaring the said land to appertain to Rajpoor Muhoowa, tuppeh Gopala: copy of this report and map bears the seal of the maharaja of Bettiah, which it is in vain for him to deny, however it may have been obtained.

Subsequently, the farmer of the defendants, styled birtbars of Rampoor, instituted summary suits against the cultivators of the disputed tolah for rent and got decrees; the ryots, dissatisfied, instituted regular suits to reverse these summary awards, but these suits were also dismissed in 1842; the defendants were also maintained in

possession by the criminal authorities under Act IV. of 1840, (with reference to the local enquiry of 1841, above alluded to.) This regular suit is now brought by the maharaja to establish his proprietary right in the disputed land, and to cancel these numerous proceedings which have been held against him.

I observe that all former proceedings in this case have been based upon the report and map of the two arbitrators appointed by the raja himself, and certainly there appears no better evidence or proof forthcoming. Moreover, the fact of a river dividing the two tuppehs and the two villages of the contending parties, as set forth in the survey maps, which accord with the arbitrators' map, and the disputed land being situated *on defendants' side of the said river*, viz., in tuppeh Gopala, is very much in defendants' favor. The *onus probandi* at any rate falls on plaintiff, and he has clearly failed in proving that the land belongs to tolah Belwa appertaining to mouzah Hitchapal. It is to be understood that no enquiry has been made in this case into the validity of defendants' alleged *birt* tenure.

ORDERED,

That this appeal be dismissed, with costs, and the decision of the lower court be confirmed.

THE 1ST MARCH 1850.

No. 18 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 28th April 1847.

Koulessur Misr, (Plaintiff,) Appellant,

versus

Begoo Sahoo, Chuneo Sahoo, and twenty others, (Defendants,) Respondents.

CLAIM, Company's rupees 1,586, 5 annas, on account of the value of grain, including price of doors and door-frames, carried off by defendants.

This suit was instituted on the 26th December 1845. It was set forth that plaintiff's father, Radhey Misr, had purchased the rights and interests of Doorga Dut Misr, (one of the defendants,) in two houses at Syedpoor Digwara, sold in execution of a decree by Begoo Saho, decreeholder, (also one of the defendants), and that plaintiff had purchased 1,781 maunds of twelve descriptions of grain, valued at Company's rupees 1,558, 5 annas, and deposited in the said houses purchased by his father at Syedpoor Digwara, and that defendants, (twenty-two in number,) on the 20th Maugh 1251 Fussily, (25th January 1844,) had openly plundered the house of the said grain, and carried off the doors and door-frames into the bargain, for the value of which the suit is instituted.

Several of the defendants appear and deny the plaintiff's charge, declaring it to be altogether false, arising from enmity, and that a similar false claim had been preferred and dismissed by the magistrate the year preceding. They also question the right of the son to sue in the life time of the father, and several of the defendants plead an *alibi*.

The principal sudder ameen considers that plaintiff has failed to adduce proof of the alleged fact of plunder, and notices that there was no detail of the grain or its price set forth in the Act IV. case, nor reason assigned for this occurrence, and holds that it is an improbable case, especially as no intimation was given at the thannah, and accordingly dismissed the suit, with costs.

JUDGMENT.

I concur with the principal sudder ameen in opinion, that the fact of plundering grain, &c., as set forth by plaintiff, has not been legally substantiated, nor is it at all probable that in so large a village as Digwara, twenty-two persons, residents of that village and living in the immediate vicinity of plaintiff's house, would deliberately enter the premises *during the day* in the presence of two servants on the spot, (Ramnath and Mopon,) and also before numerous villagers, and sack the house of 1,781 maunds of grain and the door-frames. It is moreover stated that this open plundering lasted for *two days*! and yet no notice was given at the thannah, which is admitted to be situated at a distance of only 4 beegahs from the scene of action.

Again, in the plaintiff's petition to the magistrate, dated 5th February 1844, (ten days after the alleged transaction,) it charges defendant with taking possession of his house, observing that he *knew not what had become of the grain*, and adding that it was evident *defendant wished to oust him from possession*, praying that they might be punished in order that such interference might not again be repeated. It also appears (in proof of previous enmity) from the magistrate's roobakaree, dated 24th January 1843, (six months before this occurrence,) that a similar charge was before preferred by plaintiff against two of the defendants in this case for riotously entering his house and plundering it of cash and jewels; and this case was dismissed by the magistrate, on the ground of its being without foundation. For the above reasons it is

ORDERED.

That this appeal be dismissed, with costs, and the decision of the principal sudder ameen be affirmed.

THE 14TH MARCH 1850.

No. 20 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 13th May 1847.

Munbode Sookul and Bishonath Sookul, (Defendants,) Appellants,
versus

Shewun Sahee, (Plaintiff,) Respondent.

CLAIM, for possession of a moiety of Annundpore, pergunnah Goah, with registration of name as proprietor, and for division and separation of the share claimed, with mesne profits from 1244 to 1252 Fussily, inclusive: total Company's rupees 1,471, annas 3.

This suit was instituted on the 18th July 1845. It appeared that Odwunt Rai and Seetaram had originally equal shares in this estate, the former had four sons, who, after their father's death, sold conjointly their 8 annas share to Dirgbijye (one of two sons of Seetaram,) and, upon the death of Dirgbijye, his son, Jugdeo, conjointly with Hurruck, his uncle, (the other son of Seetaram,) sold the share to plaintiff for Company's rupees 1,900, by a deed of sale, dated the 7th May 1845; the other 8 annas share, held by Seetaram, one of three brothers, was contested by the sons of Runnoo, one of the brothers, who claimed a one-third share or 2 annas 8 pie, and obtained a decree for the same. The remaining one-third share in this village belonging to Sheodeal was not claimed. This Dirgbijye and Hurruck (sons of Seetaram) obtained 2 annas 8 pie, by inheritance, and Dirgbijye alone obtained other 8 annas by purchase.* At the settlement of this estate by the revenue authorities in 1836, Dirgbijye and Hurruck were stated to be absent, although recorded as entitled to become parties, and the settlement of the entire estate was concluded with the heirs of Runnoo and Sheodeal, brothers of Seetaram, and with appellants. Plaintiff accordingly brings this action for possession of Odwunt's 8 annas share, purchased by him from the son and brother of Dirgbijye, son of Seetaram, with mesne profits.

The defendants in this case include all the heirs of Runnoo and Sheodeal with whom the settlement was made, and several peshgidars, or farmers, in possession, on advances to the proprietors, together with the sellers (by precaution) and the appellants, stated to be the purchasers of certain rights connected with Seetaram's hereditary share.

Of the various defendants cited, the appellants and three peshgidars only defended the suit in the lower court. The former maintain that Seetaram's share (8 annas) was previously sold by Dirgbijye Singh to their grandfather Nundram, (together with 8 annas share of Dareepara,) for Sicca rupees 501, under date 23rd September 1799, and that their grandfather was in possession until 1219 F. S., and

their father until 1228 F. S., since when they have held undisturbed possession; that at the time of settlement the son and brother of Dirgbijye offered no objection, admitting that the heirs of Runnoo had subsequently obtained a decree for 2 annas 8 pie, (or one-third,) leaving them in possession of 5 annas 8 pie, (Telock and others, the heirs of Sheodeal, not having claimed their one-third share.)

The peshgidars simply set forth the interest they severally possessed in the estate.

Hurruck and Jugdeo admit the sale of Dirgbijye's 8 annas share to plaintiff, and offer no objection.

The principal sudder ameen decrees in favor of plaintiff, assigning 8 annas from the shares, as noted in the margin, with wasilat as claimed in the plaint, (viz., Company's rupees 675, principal, and rupees 311, 14 annas, interest from

Present occupants Kishenpershad, Gobindpershad, Sheopershad and others, 3 annas, 3 pie, 10 krants.

Munbode Sookul and Bishonath Sookul, Appellants, 2 annas, 8 pie.

Chedeelal, 1 anna, 9 pie.

Telock Singh, Hurlpershad, Musst. Maheshur, Rajbohorun and others, 3 pie, 10 krants.

1244 to 1256 Fussily,) and with further mesne profits from date of suit to date of possession to such extent as may be proved, with interest payable by the principal defendants, with full costs of suit, excepting costs of defendants by precaution (Hurruck and Jugdeo,) who are to liquidate their own costs.

Appellants urge, in appeal, that they are not liable, being the purchasers of Seetaram's 8 annas share, and that as the heirs of Sheodeal have not claimed their one-third share, they continue in possession of one-third, (one-third having been decreed to Durrao and others, heirs of Runnoo,) and that the principal sudder ameen should not have assigned 2 annas 8 pie to plaintiff out of their share.

JUDGMENT.

The 8 annas share claimed by plaintiff was originally purchased by Dirgbijye Singh from the sons of Odwunt Rai, and recently sold to plaintiff. The right of Odwunt's sons to sell their share is not disputed, but defendants who answer contest the right of Dirgbijye Singh to sell to plaintiff at a time when he was not in possession, (the settlement of the entire village having been made with the heirs of Runnoo and Sheodeal, and appellants, in the absence of Dirgbijye and Hurruck, and from which heirs in possession certain peshgidars and others hold in farm for advances.) The right of Dirgbijye to sell to plaintiff the entire share of Odwunt purchased by him cannot be called in question, for actual possession is not essentially necessary to maintain proprietary right. Nor does plaintiff forfeit his right by the non-appearance of Dirgbijye at the time of settlement: indeed, the settlement officer in his proceeding, dated 9th August 1836, mentioned that the rights of absentees would not be prejudiced thereby; plaintiff's bill of sale, dated 7th May 1845, is duly

stamped and registered, and the heirs of Dirgbijye, Jugdeo, and Hurruck admit the sale; but the principal sudder has unaccountably awarded possession from the holders of Seetaram's share. The 8 annas share of *Seetaram*, and in which his two brothers, Runnoo and Sheodeal (or their heirs) claim to participate was not sold to plaintiff, it was *Odwunt's* 8 annas share purchased by Dirgbijye alone and re-sold to plaintiff. Plaintiff appears justly entitled to possession of an 8 annas share in the entire estate. In regard to wasilat and costs the decision is also incorrect. The amount wasilat claimed and specified in the plaint from 1244, from date of settlement to 1252, or date of suit, should not have been awarded without enquiry into the correctness of the amount of net proceeds said to have been realized; nor was it just to award the costs of suit against all the defendants including the farmers (excepting only the two defendants by precaution.) I see no ground for making the farmers, especially those who took leases from the parties with whom Government concluded a settlement, pay the costs of this suit. The settlement was made in 1836, and the heirs of Dirgbijye of their own accord absented themselves, and have since preferred no claim to the right of settlement, which in their absence was accordingly made with the other sharers present, reserving their right; and this transfer to plaintiff by sale was made on 7th May 1845, and included mesne profits from 1836, the period of alleged dispossession. But there was no actual *dispossession* on the part of the defendants; Dirgbijye and Hurruck voluntarily absented themselves at the time of settlement, and have preferred no subsequent claim, therefore they are not entitled to sell their interest in the *usufruct* to another, during the period of their voluntary absence.

ORDERED,

That this appeal be decreed, and the decision of the principal sudder ameen be reversed. Plaintiff is entitled to possession of Odwunt Rai's 8 anna share of mouzah Annundpore purchased by Dirgbijye, with right of registration and partition, and with mesne profits and interest thereon from the date of suit to date of possession, to be liquidated by the occupants in possession during that period of time. The parties to pay their own costs.

THE 23RD MARCH 1850.

No. 19 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, former Principal Sudder Ameen of Sarun, dated 30th April 1847.

Munraj Rai, (Defendant,) Appellant,

versus . . .

Ramkishon Das and Girdharry Lal, (Plaintiffs,) Respondents.

CLAIM, for possession of 4 annas or one-fourth share of Rajwara Mokeempoor, pergunnah Goah, with mesne profits, &c. : total valuation Company's rupees 1,062, annas 4, pic 9.

This suit was instituted on the 20th April 1846. The proprietary rights in this property belonging to Musst. Bhugwuttee Koer, were sold by the collector for arrears of revenue, on the 18th July 1837, and purchased by Bheganath Singh for Company's rupees 610. The auction purchaser bought the lot in his own name, and paid in the earnest money on his own account, but afterwards admitted, by petition, dated 18th September 1837, that he had purchased the lot on account of Ramkishon and Girdharry in the proportion of three-fourths for the former and one-fourth for the latter, and had taken the earnest money from them in the above proportions, praying that application might be made to them for the balance of purchase money. But when plaintiffs applied for the mutation of names, Alek Rai objected, urging that he had intermediately purchased the property from the said Bheganath Singh.

Plaintiffs urge that as the purchase money was taken from them, and the auction purchaser had originally admitted that the purchase was made by him on their account, and that he had applied for the mutation of their names, he was not justified in transferring the property into the hands of another party. The defendant Munraj subsequently bought the property for Musst. Bahoron, the widow of Alek Rai, deceased, (dated 5th July 1843,) and this suit is accordingly brought against Munraj as the principal defendant, including Bheganath and Musst. Bahoron and her minor son as defendants by precaution.

The defendant Munraj declares that Bheganath Singh purchased the lot on his own account, referring to Clause 3, Section 13, Regulation XI. of 1822, (the sale law then, in force,) which requires the collector, before concluding the sale, to satisfy himself that the bidder "is the real *bonâ fide* purchaser on his own account and risk," and denying that plaintiffs paid any part of the purchase money, which he affirms was taken from Alek Rai, adding that plaintiffs had adduced no proof of a fictitious purchase, and did not advance any claim when the former proprietor sued for the reversal of the sale upon the ground that some of the conditions of sale had not been fulfilled. This latter suit was dismissed, and the sale

upheld as legal and valid, (principal sudder ameen, 5th December 1845.)

The principal sudder ameen decides that it was clear from Bheganath Singh's own petition, dated 18th September 1837, that he had taken the purchase money from plaintiffs in the proportions above mentioned, and that he subsequently (24th May 1841,) petitioned for the registration of their names as the real purchasers, and there is no proof that Girdharay ever admitted Bheganath's right as alleged by defendant. Under these circumstances, plaintiffs were entitled to a decree, and the subsequent transfer by Bheganath became null and void.

JUDGMENT.

This claim is founded upon a bentamee, or fictitious, purchase, which, under the provisions of the sale law in force at that time, (Regulation XI. of 1822,) was held to be illegal. Plaintiffs distinctly admit this fact both in their plaint and in their application for the mutation of their names. There are precedents against the cognizance of such suits. In the case of Ram Manik Modee *versus* Jynarain, dated 21st September 1809, it was held by the Sudder Dewanny Adawlut that, even supposing the plaintiff to have been the real purchaser in the name of defendant, (the bidder,) such purchase, being expressly prohibited by the Regulation, could not form a legal ground of action. It was again ruled by the superior court in the case of Gourchurn Rai and others *versus* Hurrischunder and others, dated 28th December 1826, that a contravention of the law in this respect could not be aided by the court, and a claim founded upon a public sale in a fictitious name was not cognizable. Plaintiffs do not urge that Bheganath Rai was their constituted *agent*, but say that he bought the lot with their money in his own name, and afterwards transferred it to the names of others without their consent.

For the above reasons, this appeal was admitted on the 1st March 1850. Respondents have failed to appear within the period prescribed in the notice.

ORDERED,

That this appeal be decreed, with full costs, and the decision of the principal sudder ameen be annulled.

THE 23RD MARCH 1850.

No. 23 of 1849.

A Regular Appeal from a decision passed by Moulvee Waheedooddeen, late Moonsiff of Sewan, dated 15th January 1849.

Tirput Rai, Oojager Rai, and Chokon Rai, (Plaintiffs,) Appellants,
versus

Harel Rai, Surrub Rai, Bisheshur Rai, Bekrum Rai, Chuttro Rai,
 Jaimungle Rai, Shcogobind Rai, and others, (Defendants,) Respondents.

CLAIM, for possession of a 3 cowrees and a fraction share in mouzahs Nurlhungopal and Sunderpoor Pearce, pergunnah Bara, valued at Company's rupees 8, 15 annas, 3⁴ pie.

This suit was instituted in the lower court on the 21st September 1848. Soogund Rai, the ancestor of both parties, was stated to have been the proprietor of a 1 anna 6 gundahs share in these two villages. He had four sons, Megha, Kewul, Heut, and Ghureeba. Plaintiffs are the grandsons and great-grandsons of Prem, (the fourth son of the aforesaid Heut,) and defendants are the distant heirs and descendants of Ramchunder and Newaz Rai, (the second and third sons of the said Heut Rai.) The third parties are the descendants of Ghureeba Rai. Plaintiffs set forth that Pekoo, the grandson of Kewul, (second son of their mutual ancestor,) inherited Kewul's one-fourth share of the property, (viz., 6 gundahs, 3 cowrees, out of 1 anna 6 $\frac{1}{2}$ gundahs,) and absconded or disappeared in 1199 Fussily, and that, up to 1215 Fussily, the ancestors of plaintiffs and defendants held possession of this vacant share in the proportion of two-thirds to defendants and one-third to plaintiffs (3 cowrees and a fraction,) when defendants in 1216 Fussily *forcibly dispossessed* plaintiffs (describing the fractional portions of the share held by each defendant,) and distinctly sue for possession *under the provisions of Clauses 1 and 2, Section 3, Regulation II. of 1805*, citing the decision of the Sudder Dewanny Adawlut, dated 30th September 1847, in the case of Musst. Ominut-o-zuhra Begum *versus* Lootfoolla Khan.

Defendants plead that the said Pekoo sold his separate share (6 gundahs 3 cowrees) to Goobarry and six others, descendants of Megha and Heut and Ghureeba, in 1171 Fussily, and went to Sisser, pergunnah Mujhowah, near Ramnugger, and naming his heirs, who, they affirm, are still living, and who would appear if such was not the case, and that plaintiffs' suit is not cognizable by law as more than 60 years have elapsed since the transfer by sale.

The moonsiff of Sewan has dismissed this suit as not cognizable, inasmuch as the present occupants, by the plaintiffs' own showing, have been in undisturbed possession for 12 years antecedent to the time of preferring this claim, under a title which they believed to be valid.

JUDGMENT.

I am of opinion that the moonsiff has taken a correct view of this case: by Clause 1, Section 3, Regulation II. of 1805, it is necessary that the alleged *violent acquisition be established* to the satisfaction of the court of first instance or the appellate court. No such proof is adduced. The five witnesses cited by plaintiffs do not testify to the act of violent dispossession. Again, the defendants, or present occupants, to whom the property has descended by inheritance from certain alleged purchasers, have apparently held quiet unmolested possession under a title believed to be valid during a period of 12 years antecedent to the time of this claim being preferred in court. The suit is therefore not cognizable under the law above cited, 40 years having elapsed from the date of alleged dispossession. The precedent quoted by plaintiffs merely justified the institution of the suit, plaintiffs having in accordance with that precedent specifically pleaded for a hearing under Clauses 1 and 2, Section 3, Regulation II. of 1805, but they have failed to prove the special circumstances, to wit, *forcible dispossession*, which, after the lapse of 12 years, and within the period of 60 years, could alone have rendered the suit cognizable. I dismiss the appeal, with costs, and affirm the decision of the court below.

THE 27TH MARCH 1850.

No. 26 of 1849.

A Regular Appeal from a decision passed by Mahomed Wajid, late Moonsiff of Chumparun, dated 23rd January 1849.

Foujdar Rai, (Defendant,) Appellant,

versus

Maharaja Nowul Kishore Singh, (Plaintiff,) Respondent.

CLAIM, to annul a mokurruree or fixed lease, dated in 1213 Fussily, for 15 beegahs of land in mouzah Gochee, tuppeh Dolta, pergunnah Mujhowah, with mesne profits for 1255 Fussily: total valuation Company's rupees 272, annas 13.

It appears that the plaintiff's farmer, Kullar Raot, had previously sued defendant, the cultivator, for rent alleged to be due on account of 1253 and 1254 Fussily, and defendant in that case pleaded having invariably paid at one rupee per beegah, on a *perpetual* lease, dated 1213 Fussily, granted by Jubhoo Lal, the dewan of Rajah Nundkishore, plaintiff's elder brother. The moonsiff awarded at that limited rate previously paid, observing that a separate suit was necessary to cancel the former lease and enhance the rent. Upon this the malik is said to have remitted Company's rupees 47, annas 13, from the farmer's rental to enable him, the proprietor, to bring this suit against

the cultivator in order to cancel the lease in perpetuity, and realize the rent for 1255 Fussily. Kallar Rai, the ticular, or farmer, is cited as a third party, and of course sides with plaintiff in his exposition of the case.

In the lower court the defendant, after having been repeatedly called upon to produce his lease, failed to do so, upon which the moonsiff decreed at the rate demanded, viz., 3 rupees per beegah, commencing from the year 1256 Fussily, or date of suit, being the average rate of adjoining lands of a similar description, with costs, amounting in the aggregate to Company's rupees 72, annas 13, pie 6.

Both parties appeal, plaintiff to recover the rent of 1255 Fussily, which he had remitted from the farmer's rental, and defendant upon the ground that the suit is not cognizable after such lapse of time, (viz., from the alleged date of lease in perpetuity,) and because his receipts filed in a former case prove that he had paid an invariable rate of rent for a series of years.

JUDGMENT.

It has been ruled (*vide* Meertinjoy Shah and others *versus* Gopal Lal Thakoor, page 454, No. 11, Decisions of Sudder Dewanny Adawlut for December 1845,) that such like suits to assess are not barred by lapse of time; the suit is therefore cognizable. Secondly, the *onus probandi* falls upon defendant, and in the absence of the lease which he has failed to produce, fixing the rent at a rupee a beegah, plaintiff or his farmer is at liberty to assess at the pergunnah rates. The "mokurruree" pottah is not forthcoming; and it would not appear to have been registered; and the power of a zemindar to grant such a lease fixing a quit rental for ever is not now recognized by law. In regard to back rents, the farmer in his petition as a third party has distinctly relinquished his claim to the 15 beegahs of land for the year 1255 Fussily (in consequence of defendant's misconduct) in favor of the rajah; therefore, the rajah as malik is entitled to the rent for that year according to the pergunnah rates. The moonsiff's order awarding back rents for 1256 Fussily also, (which was not claimed,) must be amended.

ORDERED,

That the moonsiff's decree annulling the "mokurruree" pottah be confirmed, and the rental of 1255 Fussily, viz., rupees 47, annas 13, with interest, be awarded to plaintiff in amendment of the decree: the costs of suit in both courts to be liquidated by Foujdar Rai, the appellant in this case.

THE 27TH MARCH 1850.

No. 37 of 1849.

A Regular Appeal from a decision passed by Mahomed Wajid, late Moonsiff of Chumparun, dated 23rd January 1849.

Maharaja Newulkishore Singh, (Plaintiff,) Appellant,

versus

Foujdar Rai, (Defendant,) Respondent.

FOR the reasons stated in the case preceding (No. 26), this appeal is decreed, with costs, and the rental of 1255 Fussily is adjudged to appellant with interest, in amendment of the moonsiff's decree.

THE 23RD MARCH 1850.

No. 4 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 11th December 1846.

Pullukdharee Singh and four others, (sons of Hurruck Singh,) Sheoburt Miser, Hunman Singh, and Musst. Summut Koer, (Plaintiffs,) Appellants,

versus

Rai Ramkishen Das, gomashtah of Sha Rugberdeal and Sha Makonlal, (Defendant,) Respondent.

CLAIM, to cancel a settlement officer's proceedings, dated 28th December 1843, and those of a superintendent of settlements, dated 17th June 1244; and for possession of 200 beegahs of land, appertaining to Meirwa, pergunnah Baal: estimated value Company's rupees 3,000.

This suit was instituted on 7th October 1844. The disputed land, amounting to 200 beegahs, was stated to be situated on the boundary of the villages Roosee to the east and Meirwa to the west, and claimed by both. Defendants are recent purchasers of Roosee, and plaintiffs are the "bye-meadeedars," or conditional purchasers, of Meirwa, Keilasputtee Singh and Juggutputtee Singh being the late maliks of Roosee, and present proprietors of Meirwa, defendants having recently purchased their rights and interests in the village of Roosee.

In 1843, at the time of fixing the boundaries of Roosee, the deputy collector, Kheirat Ali Khan, upon the faith of certain "mochulkas," (taken from the ryots by a court ameen deputed to give possession to the purchaser of Roosee, in which certain boundaries between the two villages were arbitrarily inserted,) awarded possession to the maliks of Roosee, and which the superintendent of settlements upheld in appeal, thereby depriving the occupants of Meirwa of 200 beegahs of land, they asserting that the boundary between

the two villages lay further to the east. This suit is accordingly instituted to reverse those orders of the settlement officers, and to recover possession of the 200 beegahs, of which they have been, as they state, unjustly deprived.

Defendants urge that Hunman Singh (one of the plaintiffs) in a measure admitted before the deputy collector that the boundary was to the west of his house; that they have collected rent by distraint and by summary suits from a portion of the land in dispute, and the father of the present maliks of Meirwa had given the lease of a tank on the disputed land to one Adhawan Noonla as belonging to Roosee, (of which they were then the maliks also;) and that plaintiffs offered no objections when the court ameen gave possession.

The principal sudder ameen observed that the mochulkas taken from the ryots recorded the boundary line between the two villages, and plaintiffs had not previously offered any objections; that Hunman Singh, a byedar of Meirwa, when interrogated by the deputy collector, admitted the line to be to the west of his house; that the report of the ameen, deputed by *his* court to map the disputed boundary, take evidence, and decide the point at issue, was opposed to Hunman's statement, and therefore *not to be relied on*; and as defendants had distrained and enforced payment of rent by summary suits for the land in dispute, plaintiffs' suit must be dismissed.

Plaintiffs appeal in dissatisfaction, urging that the court ameen sent out to give possession to defendants, had no authority either to take mochulkas, or fix the boundary of the two estates, and the loss which they sustain of 200 beegahs (which they detail) out of 625 beegahs, the gross area, is very considerable, praying for further enquiry and re-measurement if necessary of the villages, and comparison with the recorded "ruqba."

JUDGMENT.

The decision of the principal sudder ameen in this case is based upon an illegal proceeding. The court ameen deputed to give possession had no authority to fix the boundaries, nor was he justified in taking penal recognizances from the ryots of the disputed land to pay their rents to the proprietors of Roosee. Possession of land under a decree of court should be given by proclamation according to the terms of the decree; especially in cases where no mention of limits or boundaries is made. The principal sudder ameen's decision in regard to the disputed land founded upon these illegal "mochulkas," taken in all probability surreptitiously, cannot be maintained. His second and third reason for decreeing in favor of defendants is as irrelevant as the first. Hunman's statement before the deputy collector was not on oath, nor is it conclusive, and yet this single statement is taken and approved of against the

recorded evidence on solemn affirmation of thirty-nine witnesses taken by a second court ameen, who was *subsequently* deputed after the institution of the suit to ascertain the facts of the case, and all of which evidence taken on the spot is at once rejected, because it does not coincide with the statement of Hunman, a single individual who was and is an interested person and a party to this suit. The third reason is founded 'upon two summary decisions for rent, in which no local enquiry was made, or any allusion to specific lands, much less to the 200 beegahs of land in dispute.

I consider that the local investigation made by order of the principal sudder ameen's court, and conducted by Omachurn Bose, ameen, dated 31st May 1846, in which the depositions of thirty-nine witnesses were taken, (principally the cultivators and residents of both villages and of surrounding villages,) is the best procurable, and which fixes the boundary to the east as stated by plaintiffs, and *as laid in Omachurn's map*, and according to which, plaintiffs are entitled to a decree for 121 beegahs, 12 cottahs, $5\frac{1}{2}$ doors, as per measurement with a $7\frac{1}{2}$ cubit rod.

For the reasons above stated this appeal was admitted on the 14th March 1849, and notice served on respondent.

On the 7th April 1849, it was held that the objections offered by the respondent before this court were of no avail, that the declaration of Hunman Singh alone upon which he relies was insufficient, and the evidence of the thirty-nine witnesses taken by the court ameen deputed to investigate the matter could not be set aside on the bare assertion of bias. The proceedings of the court, dated 10th May 1843, referred to by the purchaser, declaring the auction purchaser to have been put in possession, was a summary proceeding based upon a report of the ameen deputed to give possession, whose proceedings were found to have been irregular and illegal, and cannot be cited to bar the investigation as to the actual boundaries of the two villages in dispute upon the institution of a regular suit, and a decree was accordingly given by this court for possession of 121 beegahs, 12 cottahs, $5\frac{1}{2}$ doors, as measured by Omachurn Bose, ameen, deputed for that purpose, with costs to be liquidated by respondents.

A special appeal was admitted against the above decision by the Sudder Dewanny Adawlut, under date the 12th December 1849, on the ground that the ameen had not attested the truth of his report (dated 31st May 1846,) and that his general *oath of office subsequently taken* under the Court's Circular, No. 27, dated 17th September 1847, could not affect his proceedings *prior to that date*, and this court was accordingly instructed to re-try the case *de novo*, after swearing the ameen to the truth of his report.

On the 16th instant, Omachurn Bose appeared before this court, and on solemn affirmation specially attested the correctness of his previous enquiry in *this* case and the truth of his report, dated 31st

May 1846. And with reference to the subsequent proceedings of this court held on 31st July 1849, regarding mesne profits, it is

ORDERED,

That the principal sudder ameen's decision, dated 11th December 1846, be annulled, and appellants (plaintiffs) be entitled to possession of the 121 beegahs, 12 cottahs, $5\frac{1}{2}$ doors of land as measured and mapped by Omachurn Bose, ameen, on the 31st May, 1846, with mesne profits from the date of suit to date of possession, with simple interest at the rate of 12 per cent per annum on the mesne profits to be ascertained on application for the execution of this decree. The costs of suit to be liquidated by respondents (defendants.)

THE 30TH MARCH 1850.

No. 8 of 1849.

A Regular Appeal from a decision passed by Moulvee Mahomed Waheed-ooddeen, late Moonsiff of Sewan, dated 30th December 1848.

Rambunjun Lal, Boonead Lal, Bacharam, Purmessur Dut, Rameshur Dut, and Ishur Dut, (Defendants,) Appellants,

* *versus*

1, Sheik Tafussul Hosein, deceased, Sheik Fakeer Hosein, (son,) Beebee Meena, (widow,) Sheik Meer Hosein, (minor son,) 2, Sheik Marimut Hosein, and 3, Sheik Tofail, (Plaintiffs,) Respondents.

CLAIM, for possession of 4 b., 16 c., 17 d., 15 dk., out of 8 beegahs of land (exclusive of 5 beegahs of "durgah" land) in Surreya, pergunnah Bara, with mesne profits for 1253 Fussily, and for reversal of deputy collector's proceedings, dated 9th September 1845, and of the survey department, dated 27th September 1845; total valuation Company's rupees 112-5-18.

This suit was originally instituted before the moonsiff of Sewan on the 22nd August 1846, and possession was decreed in favor of plaintiff *without* mesne profits on the 19th January 1847, and in appeal sent back for re-trial by Nocoorchunder Chowdry, a former principal sudder ameen, on the 19th September 1848, and the former decision was maintained by the moonsiff on the 30th December 1848. This second appeal was filed by defendant on the 22nd January 1849.

Plaintiffs sue for possession of 4 b., 16 c., 17 d., 15 dk. of land as appertaining to Surreya, but situated *within the limits of mouzah Kubbeerpoor*, founded upon a bill of sale from the former maliks of Surreya, dated 8th June 1836, by which plaintiffs acquired, by purchase, 14 annas 4 gundahs in Surreya, and 6 annas 13 gundahs in Arunda and Fardeela, without any detail or particulars of the extent or situation of these villages, or the lands appertaining thereto.

Upon the survey of these villages, viz., Kubbeerpoor belonging to talooqa Burharria (in possession of defendants) and Arunda and Fardeela appertaining to talooqa Chap, the survey officers in their proceedings recorded that the 8 beegahs in question "*appeared to belong to Surreya, but were in possession of the maliks of Kubbeerpoor,*" and being situated within the area of Kubbeerpoor were registered accordingly. These proceedings dated in 1845 have apparently led to the institution of this suit on the part of plaintiffs, (the sharer of the remaining 3 b., 3 c., 2 d., 5 dk. is no party to this suit.) These survey proceedings containing the above remarks are filed by plaintiffs in proof, and two decrees for rent dated in 1825 and 1830, and six witnesses also have given evidence in support of plaintiffs' claim.

Defendants maintain that no lands appertaining to Surreya are situated within the limits of Kubbeerpoor, they also produce a decree of court for rent, dated 18th July 1843, and extracts from the register of 1197 Fussily to disprove that the lands of any other villages are mixed up with their village Kubbeerpoor, and the collector's record keeper, in his report, dated 19th May 1845, after inspecting the registers, attests this fact; a court ameen was also deputed to make local investigation, and submitted that the evidence taken by him was in favor of plaintiffs' claim.

The moonsiff of Sewan (Waheedooddeen,) upon the proof and evidence adduced by plaintiffs, decreed in favor of plaintiffs, but without wasilant, and defendants, in dissatisfaction, again appeal to this court.

JUDGMENT.

Amongst such conflicting evidence and contradictory proofs adduced in this case, it is difficult to arrive at the truth. There are two decrees of court for rent produced one opposed to the other, and witnesses on *both sides* testify to the fact of possession, although it is admitted that the land is at present *waste* and yielding no crops; the testimony offered by either party on this point is not corroborated satisfactorily by any proof of *actual possession*. There is however one argument in favor of appellants (defendants,) which appears to me to be irresistible, viz., that the *land claimed by plaintiffs as belonging to Surreya is admitted to be situated within the limits of Kubbeerpoor*, and plaintiffs have adduced no documentary proof, either bill of sale or transfer, to show how these lands alleged to belong to the maliks of Surreya have found their way within the boundaries of Kubbeerpoor, a village appertaining to another talooq! Again, the collector's registers record the villages of "Surreya, Anunda, and Fardeela" as one distinct lot belonging to talooqa Chap, and the village Kubbeerpoor as belonging to talooqa Burharria; and the record keeper has also reported that the *lands of Kubbeerpoor are recorded as not mixed up with lands of any other village*. In the sec-

tion survey map (No. 18) I observe Anunda and Tardeela are set down as touching Kubbeerpoor at the north-east corner, but *Surreya is not recorded in the map*. The court ameen's report in favor of plaintiffs rests entirely upon the oral evidence of a few *witnesses* procured by the ameen on the spot. Perhaps another ameen differently disposed, if deputed, might as easily procure evidence in favor of defendants. I hold that plaintiffs have failed to establish by convincing proof, either oral or documentary, that their share of the 8 beegahs of land claimed within the village of Kubbeerpoor, belongs to Surreya.

For the above reasons this appeal was admitted on the 16th February last, and notice issued to respondents, who severally maintain through their pleaders that the lands of one estate are often found within the limits of another, and cite instances in proof, and that the boundaries of villages have not heretofore been recorded in the collector's office, and that their six witnesses prove the fact that the land claimed (within Kubbeerpoor) belongs to Surreya, and that there is nothing irregular in omitting to cite the boundaries of the specific land *claimed*, within the *specified* limits of the 8 beegahs mentioned.

Having considered the above pleas and re-heard the evidence of plaintiffs' witnesses in this case, I am still of opinion that the plaintiffs have failed to substantiate their right. It is admitted that the land in dispute is situated within the village of Kubbeerpoor, and they have produced no evidence to account for this circumstance, or no deed of transfer of the lands of talooka Chap with the lands of talooka Burharria. Shah Jummah, the manager of the durgah, which is situated on the remaining 5 beegahs, admits that the land claimed belongs to Kubbeerpoor, and the six witnesses cited by plaintiff to the contrary are insufficient, in my opinion, to controvert the indisputable fact of the land lying within defendants village Kubbeerpoor, which must be considered as *prima facie* evidence of their appertaining to the village in which they are situated, unless satisfactorily proved to have been assigned to the maliks of Surreya, Arunda, and Tardeela, (mehal Chap,) by deed of sale or transfer or gift. For these reasons, I reverse the decision of the moonsiff of Sewan, and decree in favor of appellants, and dismiss the suit of plaintiffs, with full costs.

THE 30TH MARCH 1850.

No. 21 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, former Principal Sudder Ameen of Sarun, dated 15th May 1847.

Bulwunt Saho and Bhagirut Ram, (Plaintiffs,) Appellants,
versus

Hurree Das and Hurkishen Das, (Defendants,) Respondents.

CLAIM, Company's rupees 1,980, on account of a deposit, with interest from 24th Aughun to 30th Chyte 1252 Fussily.

This suit was instituted on the 10th May 1845. Plaintiffs are resident traders, of Mukdoomgunge, pergunnah Cheerand, and defendants are bankers of Calcutta and Benares, having a bank also at Revelgunge, in charge of Madhoda's gomashtha. Plaintiffs assert that on the 24th Aughun 1252 Fussily (18th December 1844,) they deposited Company's rupees 1,900 in the hands of Madhoda's, the gomashtha of defendant at Revelgunge, for the purpose of trading in rice and saltpetre, and which on demand the firm refused to pay; adding that a false counter claim had been brought by defendants against them (plaintiffs) in order to avoid payment.

Defendants denied having had any such transaction with plaintiffs at Revelgunge, stating that plaintiff had drawn upon their house in Calcutta through their gomashtha Manikram, and to recover which they had sued and obtained a decree against plaintiffs in the Sarun court, and that this was a counter claim *subsequently* instituted.

Plaintiffs, in support of their claim, produced a receipt for the amount in the mohajune character, signed by the said Madhoda's, who is made a defendant in this case by precaution (since dead), and cited four witnesses to prove the deposit and entry in defendants' books.

The principal sudder ameen had the banking and trading books of both parties examined, and not finding the entry in the defendants' books at Revelgunge, which were reported, by an inspector, to be regularly kept, and discrediting the witnesses cited by plaintiffs for the receipt, and with reference to the circumstance of defendants having previously obtained a decree against plaintiffs for nearly a corresponding sum, dismissed this suit as being without foundation.

JUDGMENT.

The principal plea urged by appellants is, that the particular banking book containing the deposit was not produced by defendants, but another substituted in lieu thereof, in which of course the entry did not appear. This plea is scarcely susceptible of direct proof. It is clear, however, that the deposit book filed by defendants embraced the period of the deposit in question, and contained moreover a debt against plaintiffs on another account, and the inspector declared this banking book to have been regularly kept according to the usual

custom of native bankers. There is no reason therefore to doubt its authenticity, and which might have been duly 'verified or otherwise, and the point of other books being forthcoming or not attested by the gomashtha Madhudas (who was then alive,) had not appellants cited him as a defendant in this case by precaution, perhaps in order that his evidence might not be taken in this case. Moreover, it is not customary amongst native bankers to keep two sets of account books *for the same period*, unless for some fraudulent intent. Again, it is evident that the defendants' claim was instituted against plaintiffs four months before this suit, and a decree was obtained in the principal sudder ameen's court on the 17th March 1846, and confirmed in appeal on the 12th June 1847, and in that suit, although this deposit was pleaded by plaintiffs as a set-off, its authenticity was not inquired into. Under all circumstances, and with reference to the respectability of defendants' firm, which is an old established banking house in Calcutta and Benares, I am induced to side with the principal sudder ameen, in thinking that this is a false counter claim set up from motives of enmity.

ORDERED,

That this appeal be dismissed, with full costs, and the decision of the lower court be affirmed.

THE 30TH MARCH 1850.

No. 22 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, former Principal Sudder Ameen of Sarun, dated 17th May 1847.

Purbhoo Rai, (Plaintiff,) Appellant,

versus

Hunnoo Pandey, Sheogollam Pandey, Rugber Pandey, and Ramchaieber Pandey, (Defendants,) Respondents.

CLAIM, for possession of 20 beegahs, 9 cottahs, 2 doors, with the houses of Jeolal and other ryots, and a tank called Barkutta in mouzah Dhurharra, pergunnah Chowbar, with mesne profits for 1252 Fussily: total valuation Company's rupees 1,450-1-9.

This suit was instituted on the 23rd June 1845. Plaintiff represented himself to be the auction purchaser of the village of Dhurharra, pergunnah Chowbar. In 1844, upon a general survey of the adjacent villages Dhurharra and Bishenpoora, *this land in dispute is stated to have been awarded by the deputy collector to the maliks of Bishenpoora, an adjoining village to the south-west of Dhurharra.* Plaintiff seeks to reverse those proceedings of the deputy collector, resting his claim upon the rough map of a native ameen deputed under Regulation XIX. of 1814, to divide Dhurharra amongst the proprietors in 1836, (1243 Fussily,) supported by the evidence of seven witnesses.

Defendants rest their claim in refutation upon long possession, and the award in their favor by the survey department.

The principal sudder ameen places no reliance upon the evidence of the witnesses adduced by plaintiff, and notices that the ameen's map is not attested by any functionary, and rejects the claim as not proved.

JUDGMENT.

The rough sketch of the butwarrah ameen is evidently not a map which can be relied upon. Indeed the *form* of the village lands of Dhurharra, which it is meant to represent, does not accord with the Government *survey maps*, and does not exhibit the adjoining lands of Bishenpoora in dispute, and the oral evidence *adduced on this point* by plaintiff is of itself insufficient to substantiate his claim. Moreover, plaintiff in suing for miscellaneous land should have distinctly set forth in the plaint paper the *boundaries* of the land claimed, which he has omitted to do. The deputy collector's proceedings, under date 12th December 1844, show that as a preliminary to survey every requisite enquiry was made on the spot amongst the cultivators and parties concerned, with a view of ascertaining the correct boundary between the two villages, and this disputed land was duly awarded to Bishenpoora, and the conclusion so arrived at by the deputy collector appears to have been just and equitable.

For these reasons I see no reason to interfere, and dismiss this appeal, with costs, and confirm the decision of the principal sudder ameen. •

ZILLAH SYLHET.

PRESENT: H. STAINFORTH, Esq., JUDGE.

THE 6TH MARCH 1850.

No. 7 of 1850.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lusker-pore, dated 12th December 1849.

Kurreem Qollah, Appellant,

versus

Mohunnath, Respondent.

RESPONDENT, ryut in talooka Nurnarain Ghose, No. 1, sued for rupee 1, annas 9, pie 5, the value of his crop cut and carried off by appellant, including interest.

Appellant pleaded that the crop was his own, on his lakhiraj land; and that the amount of the crop is exaggerated, &c.

The moonsiff (Baboo Ramtaruk Rai) decreed the claim on *ex parte* evidence produced by respondent.

Appellant now urges that his vakeel had colluded with respondent's landlord; and that therefore subpoenas were not issued for his witnesses.

JUDGMENT

Appellant filed his list of witnesses on the 30th October, and did nothing more up to the 12th December last, when the suit was decided; and his plea of collusion on the part of his vakeel appears to me inadmissible: and as respondent's claim is attested by the unrebuted evidence of his witnesses,

IT IS ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 7TH MARCH 1850.

No. 11 of 1850.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russool-gunge, dated 13th December 1849.

Mahomed Kadir and others, Appellants,

versus

Mahomed Zuckee and others, Respondents.

MAHOMED KADIR and Subbook Beebee, sellers, and Sheik Rhumut Oollah and others, purchasers, sued for possession of

koolba 1, kear 9, jet 6, reg 2 of land, with mesne profits, praying for a decree in favor of the purchasers.

Mahomed Zuckee filed an answer, averring that the mother of the appellants, who now announce themselves as having sold to their co-appellants, sold the land in suit long ago to his (respondent's) father, he (respondent) being, at the time, a minor.

The moonsiff (Baboo Hergourree Bose) decided the suit under a deed of relinquishment filed by appellants' vakeels.

Appellants now urge that they never executed the vaqualutnamah under which the deed of relinquishment was filed.

JUDGMENT.

The deed of relinquishment of the claim bears appearance of fraud. The ground on which its purport declares it to have been executed is, that the appellants, sellers, had discovered that their mother had actually sold the land, but no reason is given why the purchasers should relinquish their claim. The vaqualutnamah too, under which the deed of relinquishment was filed, is a suspicious document. It bears the attestation of the cazee of Russoolgunge, who has merely recorded that three witnesses attended him, and has said nothing of any of the appellants having attended. Again, only two out of the three vakeels appointed by appellant have certified that Sheik Monim and Mahomed Kadir brought the vaqualutnamah to them, a circumstance which those appellants deny. Under these circumstances, before faith can be put in the deed of relinquishment, enquiry must be made whether it was really executed by appellants or not.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the purpose above indicated. The value of the stamp on the petition of appeal will be refunded, and the moonsiff will pass orders in regard to the remaining costs of the appeal.

THE 7TH MARCH 1850.

No. 13 of 1849.

Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 11th December 1849.

Bulram Nao, Appellant,

versus

Taranath Daum and Ruheem Oollah, Respondents.

APPELLANT'S plaint sets forth that Taranath Daum, his zemindar, illegally gave the land in his (appellant's) tenancy, with its crop, to Ruhmut Oollah; wherefore he sued for rupees 10, the expense of 2 servants, who cultivated the land for two months, *plus* rupees 9, annas 6, hire of 2 ploughs and bullocks of the same period, and

rupees 3, paid as rent, for the year 1254, of the land of the crop in suit, and 1 rupee, annas 8, the price of seed, in all rupees 23, annas 14.

Taranath Daum admitted appellant to have been his tenant of the land in 1254, and denied that he transferred it to Ruhmut Oollah, &c. &c.

The moonsiff (Baboo Chunderkishwur Rai) deducted rupees 5, annas 4, overcharged as hire of ploughs, with rupees 3, not proved to have been paid as rent, and decreed the rest of the claim against Ruhmut Oollah, with costs in proportion, saddling appellant with Taranath's costs.

Appellant now appeals, praying for a decree for the sum disallowed by the moonsiff, and that Taranath may be rendered liable.

JUDGMENT.

I find that only two witnesses have been examined on the part of appellant. Both have deposed that the land was ploughed for two months, and the deduction from the amount claimed, as the expense of ploughing has been made, because one of the witnesses has stated that the land could have been prepared at less expense; but this is not good ground for the deduction, the question being, what was the actual expenditure? The case however needs further investigation. Appellant urges that Ruhmut Oollah acted at the instance of Taranath Daum, and prays for a local enquiry; and as it is extremely improbable that Ruhmut Oollah acted without the zemindar's sanction, and I find that, when appellant filed his list of witnesses, he produced two of them and offered to produce the rest, if necessary, I think it right to remand the suit.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the purpose indicated above. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass orders in regard to the remaining costs of this appeal.

THE 7TH MARCH 1850.

No. 16 of 1850.

Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 15th December 1849.

. Punditram Deb, Appellant,

versus

Soolaye Dasee, widow of Sona Ram Das, Respondent.

THE late Sonaram stated in his plaint, that he gave 1 tola $1\frac{1}{2}$ ruttee of gold, on the 25th Asar 1244, for the purpose of being transformed into a "nut," or nose ring, to appellant, who failed to make the ring, but agreed to pay rupees 20, the value of the

gold, before several persons, on the 1st Phalgun 1256, and actually paid rupees 3, through Sheik Hazarce, promising to pay the balance in 15 days, and he sued for rupees 17, principal, with an equal sum as interest.

Appellant denied the transaction, and pleaded *alibi* at his niece's marriage, and that the suit was made up because of a dispute for annas 8, due to him for making up a silver necklace for Sonaram in 1254.

Respondent, in reply, denied that the marriage took place at the time pleaded by appellant, naming a number of witnesses.

The moonsiff (Baboo Chunderkishwur Rai) distrusted the evidence to appellant's plea of *alibi*, and, holding plaintiff's claim proved by the evidence of his witnesses, decreed for the principal, disallowing interest, as no stipulation had been made regarding it.

Appellant now re-urges his old pleas, and adverts to the great delay which has taken place in the institution of the suit, and he prays the evidence of respondent's witnesses may be subjected to perusal, which will elicit their falsehood, adding that his (appellant's) witnesses have spoken to the dispute about the money claimed for making a necklace.

JUDGMENT.

The claim is certainly a stale one, but had it been false it would have been easy to lay the date at a less remote time. The defence too is extremely improbable, and no probable ground for a false suit is discernible. On these grounds I distrust the witnesses adduced by appellant, and believe those brought forward by respondent's late husband, and hold the claim proved.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 7TH MARCH 1850.

No. 27 of 1850.

Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 26th December 1849,

Sherisheedhur Surmah, Appellant,

versus

Kaleckaunt Chukerbuttee, Respondent.

APPELLANT, who had instituted a suit in the moonsiff of Lushkorpore for damages for abuse, presented a petition, alleging this suit to have been made up, collusively, to establish the absence of the person sued by him on the date of the alleged abuse, to wit, the

date of the bond in this suit; but, as appellant was not a party to this suit, the evidence and decision cannot be taken to establish the *alibi* as he apprehends.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, with costs.

THE 7TH MARCH 1850.

No. 32 of 1850. *

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lushkerpore, dated 22nd December 1849.

Tumeez Oodeen Mahomed, Appellant,

versus

Sheik Ufzul, Respondent.

RESPONDENT, who declares himself servant of Shah Outad, denies tenanting any land belonging to Kumeze Mean, and states that, notwithstanding this, at appellant's instigation, Kumeze Mean caused him to be seized on his boat by men armed with clubs, and carried to the house of appellant, his father-in-law, where he demanded rupees 100, rent of land, which he finally extorted, the same being sent by his brother, through Rammanik Nag and others, who paid the same to Kumeze Mean on the 31st Jyte 1254; a receipt for 49 rupees only being given to him; that he was compelled to put his signature to a kubooleut and chalan; and that he complained to the magistrate, who punished his oppressors—and he sues for the sum taken from him, with interest.

Tumeez Oodeen filed an answer, in which he states that respondent had withheld his rent for 3 years, for land belonging to Kumeze Alee, and Shah Outad, in collusion with the latter, paid the amount, 49 rupees 8 annas, when Kumeze Alee was about to sue and deprive him of the farm, depositing 50 rupees more with his relative Sheik Imam Oodeen, in order to retain the farm for the years 1254 to 1257, which latter sum, however, he afterwards took away under a receipt, in consequence of Kumeze being adverse to the continuance of the farm; that respondent, in consequence of this, preferred a false complaint before the magistrate; and that Kumeze Alee, his son-in-law, lives in the Tipperah district, where the transaction took place, and where the prescribed notices have not been served, respondent having declared him resident in this district, &c.

The moonsiff (Baboo Ramtaruk Rai) distrusted appellant's witnesses, on account of discrepancies in their evidence. He observed that Kumeze Alee himself had admitted, before the magistrate, his residence in this district, and had denied taking both the money and kubooleut: and deeming the suit instituted in the legal court

according to Construction No. 73, and holding respondent's statements fully proved, he decreed the claim.

Appellant now urged that he is not sued as a principal, and is not declared or proved to have partaken of the money; and that another suit shows Kumeze Alee to reside in Tipperah.

JUDGMENT.

I think Kumeze Alee's own statement of residence in this district a sufficient guarantee of the fact asserted. And as, after examination of the evidence, I concur with the moonsiff in deeming it proved that appellant and Kumeze Alee extorted rupees 100 from respondent, and the claim is against both, I see no reason to interfere with the moonsiff's decision.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 8TH MARCH 1850.

No. 48 of 1850.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lushkerpore, dated 29th December 1849.

Ikram Oollah, Appellant,

versus

Sheik Noor Oollah and Sheikh Neyin Oollah, Respondents.

RESPONDENTS sued to recover, with an equal amount as penalty, 14 rupees, exacted from them, through a peada deputed in a suit under Regulation VII., 1799, as rent of land for 1253, they (respondents) cultivating no land belonging to appellant.

Appellant answered, alleging only 7 rupees to have been realized as rent and costs from respondents, his tenants of 2 kears of land in talooka Mahomed Nasir, No. 158, mouzah kismut Syfpoor.

The moonsiff (Baboo Ramtaruk Rai) decreed 14 rupees and 8 annas in respondents' favor, not finding it proved that they tenanted appellant's land, and indeed finding the reverse proved, and holding, with reference to the papers of the summary suit, that appellant only exacted 7 rupees 4 annas.

Appellant now urges that respondents' witnesses are under the influence of respondents; that he has not had an opportunity of cross-questioning them; that only two of his witnesses have been examined; that no local investigation has been made; and that, under Sections 16 and 17, Regulation VII., 1799, the award of penalty is erroneous.

JUDGMENT.

This suit was formerly remanded, on appellant's petition. On the 21st December, the appellant was ordered by the moonsiff to adduce

what witnesses he chose, and he brought two witnesses on the 29th idem, and made no request that any others should be sent for, so that I need only consider whether, on the papers before me, I can give any other order than that passed by the moonsiff: and, as I concur with the moonsiff in holding it unproved that respondents cultivated any land belonging to appellant, and the law cited by him is not applicable to this case, as no summary decree was passed, and that the award of penalty is strictly legal and clearly just, I see no reason to question the propriety of the moonsiff's decree.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 9TH MARCH 1850.

No. 9 of 1850.

Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 18th December 1849.

Sheik Kela, Appellant,

versus

Mahomed Ghuffoor and others, Respondents.

APPELLANT sued for 5 rupees, the price of thatching grass grown on $2\frac{1}{2}$ kears of land, cut and carried off in 1255, under order of Mahomed Ghuffoor, by the other respondents, declaring the land to appertain to talooka Secunder, No. 41, in mouzah Dhartun, the property of Mahomed Hatim and Mahomed Yaseen, purchasers from the person who bought the same at auction, and to be in plot 15 of the land which the ameen, deputed to give possession to the auction purchaser, delivered to him, and which appellant has tenanted for the last 9 or 10 years, and the grass is valued at 300 bundles per rupee, and the crop carried off estimated at 1,500 bundles.

Mahomed Ghuffoor filed an answer, denying that the land appertained to talooka Secunder, and that it belonged to Mahomed Hatim and Mahomed Yaseen, asserting it to be part of talooka Mahomed Ameen, No. 46, his property; that clandestine measurement of the land by an ameen could not prejudice his rights; that appellant never raised grass on the land; that the suit is made up by Mahomed Yaseen, through his ryut, because respondent had sued that person for damages; and that the land of the crop in suit is grazing ground for cattle in the rains, whence respondents' people bring wood for burning.

Appellant, in reply, denied that the land of the crop in suit was grazing ground, and that respondent took wood for fuel from it, and noticed that respondent had not denied carrying off the grass.

Mahomed Yaseen and Izzut Beebee filed a petition in support of appellant.

The moonsiff (Baboo Chunderkishwur Rai) observed that though appellant had adduced witnesses in support of his claim, their evidence was unworthy of trust, seeing that there were no boundaries in the plaint, while the witnesses described them, and the plot in the plaint was not of the same number as that in appellant's pottah, the former being No. 15, and latter No. 10: and, holding respondent's defence established by the testimony of his witnesses, he dismissed the suit.

Appellant now urges that his claim is fully established; that there was no need of specification of boundaries, when the plot of the ameen's chittah was specified; that the examination of this pottah and plaint will show whether they disagree, &c.

JUDGMENT.

It is doubtful whether the number in the pottah be meant to represent 10 or 15, and the circumstance that the witnesses have described boundaries, while the plaint exhibits none, affords no intelligible grounds for rejecting the evidence of the witnesses: and there are no data, with reference to the conflicting evidence of the witnesses of the parties, which enable me to decide in whom possession of the land of the crop in suit has been vested. This must be ascertained by local enquiry, and the suit remanded for the investigation.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the purpose indicated. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass orders in regard to the remaining costs of this appeal.

THE 13TH MARCH 1850.

No. 54 of 1850.

Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 25th January 1850.

Tiluk Chand Shah, Appellant,

versus

Nundram Haldar, Respondent.

RESPONDENT sued for rupces 2, annas 8, the price of half a maund of salt and 4 annas coolee hire, which appellant agreed to pay before a punchayet in 15 days, with interest.

Appellant filed an answer, stating that respondent had received the salt with the amount of coolee hire, with interest, *i. e.*, annas 9, pic 6, from his brother Mooluk Chand; and that the suit is instituted, because respondent wanted Mooluk Chand to give more salt, and the dispute consequent thereon.

The moonsiff (Baboo Chunderkishwur Rai) held respondent's claim proved by the evidence of his witnesses, and, finding that appellant had done nothing towards the adduction of his witnesses

from the 15th January to the 25th idem, decreed the claim, disallowing the interest,

Appellant now urges that the suit was decided in nine days after proof was required from him; that he was engaged in another suit before the principal sudder ameen, and did not know that proof had been required from him; that the cause of suit arose in the Tipperah Rajah's territory, and that respondent's witnesses are connected with him.

JUDGMENT.

I see no reason to interfere in this decision: the claim is clearly made out, and indeed the *onus* of proof lay with appellant, who should have provided for the adoption of the measures necessary for the adduction of his witnesses during his absence: and appellant lives in this district.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 14TH MARCH 1850.

No. 181 of 1850.

Appeal from the decision of Moonshee Nuzeer Oodeen Mahomed, Moonsiff of Parkool, dated 22nd October 1849.

Dunceram Das, Appellant,

versus

Ram Das, Respondent.

RESPONDENT sued to recover, with interest, from appellant, his relative, the balance of a loan of rupees 12, made on the 21st Phalgun 1250, of which rupees 2 had been repaid by appellant's mother on the 11th Jyete 1252.

Appellant answered in denial of the asserted loan and repayment, and pleaded that, had the money been lent, a bond would have been taken; that he would not give evidence before the magistrate in a complaint made by respondent, whence arose enmity which led respondent to persuade the minor sons of Jyram Das to close the path to his (appellant's) house, a matter concerning which appellant was about to complain to the magistrate, when respondent forestalled him with this suit.

The moonsiff (Moonshee Nuzeer Oodeen Mahomed) held the loan proved by the evidence of two witnesses, relatives of the parties, whose testimony was supported by that of a third witness also a relative of the parties, and named by appellant himself, and corroborated by the result of the local enquiry. On these grounds he rejected the evidence of three witnesses produced by appellant, whose depositions tended to prove enmity subsequently to the date of the loan, and decreed the claim in respondent's favor.

Appellant now attempts to throw discredit on the evidence of the witnesses believed by the moonsiff, as the testimony of persons under respondent's influence, &c. &c.

JUDGMENT.

I think this petty claim proved, beyond reasonable doubt, by the evidence of the witnesses, as exhibited in the decree of the moonsiff.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 14TH MARCH 1850.

No. 12 of 1850.

Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of Hingajeeah, dated 10th December 1849.

Khoodeja Banoo and others, Appellants,

versus

Kasheenath Shome and others, Respondents.

RESPONDENTS sued to recover, with an equal amount as penalty, rupees 6, annas 13, pic 6, paid by them, to save from the sale their property attached under Regulation V., 1812, under pretence of their being tenants during 1253, of land in talookas Nos. 8 and 296, of pergunnah Lungla.

Appellants answered that respondents were tenants in the said talookas, and paid the sum abovementioned.

Respondents filed a reply, alleging that appellants have wrongly stated the boundaries of one of the parcels of the land for which rent was exacted, the said parcel comprising, as per boundaries specified in the reply, koolba 1, pao 1, jet 5, of nankar land, in the name of Sham Rai Canooongoe, their property, assessed and settled with them under plots 723, 724, and 725, in a pottah, dated 3rd Asar 1253, and granted to them by the collector.

The moonsiff (Baboo Chunderkishwur Rai) held appellants' statement unproved, and respondents' proved by the evidence of their witnesses and the result of a local investigation, and decreed accordingly.

Appellants now urge that their defence is established by the evidence of Mahomed Hatim, Sheik Badoollah, and Sheik Mahmudee, their witnesses, and by that of Unwur Mahomed, Mahomed Mosin, Jowaboodeen Mahomed, and others, disinterested persons examined by the moonsiff, who himself visited the place of the dispute; that, though respondents have produced a pottah, showing kear 7, jet 5 of nankar land to have been settled with them, the said land was, in the previous year, in tenancy of Kaleekapershad and others, who gave a kubooleut for the rent and paid accordingly, and that respondents are proved to have tenanted the rest of the land of the rent in suit.

JUDGMENT.

No written engagement to pay the rent in suit is alleged to have been executed by respondents, and no verbal agreement is proved, or inferrible from proof of previous payments: under these circumstances, the exaction of which respondents complain is not justified, and must be held illegal: and I see no reason to interfere with the moonsiff's decision.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 15TH MARCH 1850.

No. 18 of 1849.

Appeal from the decision of Moulvee Suadut Allee Khan, Principal Sudder Ameen, dated 28th August 1849.

Syad Reza-Ool-Rhuman, Appellant,

versus

Kurreem-Oollah, Respondent.

RESPONDENT'S plaint sets forth that appellant estimated the yearly rental of his zemindaree, after deducting 25 rupees for land, of which the rice was used by respondent, at 1,478 rupees, 11 annas per annum, and took it, on 20th Assin 1245, in farm for five years from 1245 to 1249, agreeing to pay the Government revenue and the zemindaree officers of collection; to pay, with interest, £175 rupees due to Sumbhoonath, 675 rupees due to Lalchand Shah, 150 rupees due to Oochub Ram Pal, 200 rupees due to Sheik Buddul, under two bonds, also 400 rupees to respondent himself; to recover the deeds held by the creditors; to deliver the dakhilas; and to pay any *nuzzerana*, which might be presented at the time the rents were fixed yearly, with any *muhtote* which might be realized, profit and loss resting with the lessee. It further sets forth that Sumbhoonath and Oochub Ram were paid in full, and Sheik Buddul in part only; that the debt to Lalchand, the 400 rupees payable to respondent, 60 rupees realized as *nuzzerana*, and part of the debt to Sheik Buddul were unpaid by appellant, who had not returned the documents or rendered up the dakhilas and papers of collection, but relinquished his hold on the zemindaree after expiry of the farm. And respondent finally sued for 700 rupees, paid by him to Ruttun Bullubh, son of Lalchand, on the 3rd Jeth 1252, *plus* 26 rupees, 11 annas, 8 pie, balance of principal, paid to Sheik Buddul on the 24th Sawun, *plus* 60 rupees presented as *nuzzerana*, and 400 rupees payable to himself, with interest, in all 1,748 rupees, 10 annas, 5 pie.

Appellant admitted the farm, according to the terms described in the plaint, adding that it was stipulated that respondent should not

interfere in the zemindaree for 5 years, under penalty of being saddled with the balances due to the mahajuns, with interest, and any loss which might accrue; and that the expense incurred through any disputes concerning the zemindaree were to be debited to respondent: and he pleaded that, in addition to the sums admitted by respondent to have been paid, he paid rupees 441, annas 8, gundahs 10, out of 675 rupees, to Ruttun Bullubh, son of Lalchand, on several dates, as per 13 tokas signed by him; that he paid rupees 199, gundahs 8, to Sheik Buddul, with interest; that he paid rupees 345 to respondent, to whom also, on the 13th Maugh 1248, he paid 100 rupees under agreement that an equal sum should remain payable by respondent to the mahajuns, if it was not returned by him at the end of the year; that the rents were fixed yearly at respondent's house, and therefore whatever *nuzzerana* was presented was given to him; that he collected 900 rupees, rent on account of 1249 B. S., but that respondent interfered in Phalagoon, *i. e.*, two months before expiration of the lease, and realized rent, &c.

A reply and rejoinder were filed in support, respectively, of the plaint and answer.

The principal sudder ameen distrusted the evidence of the three witnesses adduced to prove interference in the zemindaree by respondent in the month of Phalagoon, *i. e.*, before expiry of the term of the lease, because two of the witnesses were appellant's old servants, and the third only spoke to hearsay; because it was improbable that respondent would interfere, to his own loss, two months only before the lease had expired; and because appellant's possession for the whole time of the lease was proved by witnesses, and probable from the circumstance of appellant having paid the Government revenue up to the end of the year.

He found, by the evidence of Ruttun Bullubh, son of Lalchand, and his account book, that 431 rupees, 8 annas, 10 gundahs had been paid by appellant to that mahajun under 12 tokas, finding that the sum of 1,121 rupees, 15 annas, 10 gundahs, 16 krants, was the sum due to Ruttun Bullubh, with interest from the date of the bond to the date of plaintiff's payment. He deducted the sum paid by appellant to Ruttun Bullubh with interest, that is to say, the sum of 447 rupees, 15 annas, 8 gundahs, 12 krants, and declared that respondent, who had paid the remainder of the debt to Ruttun Bullubh, should recover the balance after the said deduction, that is to say, 674 rupees, 2 pie, 4 krants, with interest, from appellant.

He found that appellant admitted not having paid Sheik Buddul in full; and that respondent had satisfied the suit of his heirs, by payment of 26 rupees, 10 annas, 8 pie, which sum he decreed with interest against appellant.

He found three out of the four orders for payment of his own personal allowance, asserted to have been given by respondent, genuine and proved; and, allowing, on them, appellant's plea of payment to the extent of 310 rupees, he decreed 102 rupees, 10 rupees

of which was the sum in the 4 k. order unproved and deem spurious, and the remainder as unsupported by any receipt or evidence, with interest, against appellant.

He further found that appellant had not proved that the rents were fixed yearly, and the nuzzerana paid, at respondent's house, seeing that the evidence was discrepant; and, holding it proved that appellant had received this money, the amount of which was not disputed, he decreed the amount, 60 rupees, with interest, in respondent's favor; and his order is, that respondent do receive from appellant the said sums, in all 1,346 rupees, 9 annas, 13 gundahs, 12 krants, with interest, to the date of realization, the costs being allowed to the parties in proportion to the sum decreed, with interest.

Appellant now urges that interference in the farm by respondent is proved; that the amount of nuzzerana is not proved, and notwithstanding decreed; that he acted for the benefit of respondent, who has sued from enmity; and that interest should not be allowed under the circumstances: and he prays for a local investigation.

JUDGMENT.

It appears to me that respondent did not interfere in his estate till the term of the appellant states that his own collections ceased with month of Maugh, and two witnesses, the evidence of the third being hearsay, have sworn to respondent's interference in Phalagoon debarring appellant from collecting during the concluding months, Phalagoon and Chyte. But the evidence of these witnesses is rebutted by the testimony of numerous witnesses on the part of respondent, showing appellant to have held possession to the end of his lease; and the evidence of these witnesses is consistent with probability, for had there been interference, its stipulated consequence was, shifting liability for the balances due to the mahajuns from appellant's to respondent's shoulders, and appellant would surely, under such circumstances, have given notice of the infraction of the agreement to the civil or criminal court, which he did not do.

The principal sudder ameen states that the nuzzerana, which is not fixed in the agreement between the parties, is not disputed; but I find that appellant has denied receiving any nuzzerana, and this denial threw the *onus* of proving 60 rupees were paid to appellant, upon respondent, who has not proved such payment.

Lastly, I see no reason why interest should not be allowed.

IT IS THEREFORE ORDERED,

That the decree of the principal sudder ameen be amended, by the sum of 60 rupees, with interest, being deducted from the sum decreed, and by a corresponding alteration in the costs; and that it be affirmed in every other respect.

THE 15TH MARCH 1850.

No. 191 of 1849.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Hin-jageeah, dated 7th November 1849.

Mahomed Urzan, Appellant,

versus

Koodrut Beebee, Respondent.

RESPONDENT sued for 1 kear 3 pao of land, with mesne profits, declaring dispossession in 1235 B. S. She stated that appellant had tenanted the land for some time, paying rent up to 1234; that he withheld it from 1235; that a suit was instituted for the rent due from 1235 to 1244, which was thrown out on the ground of appellant's long possession, respondent being ordered to sue for the land; and that she sued for the land, but that her suit was struck off, on default, on the 9th September 1848. She added that though 12 years had elapsed from the date of dispossession, they had not elapsed from the date on which she was ordered to sue for the land, and that as appellant had obtained possession of the land through fraud, the suit was at all events cognizable under Clause 1, Section 3, Regulation II., 1805.

Appellant declared the land to appertain to another talooka, his property, and pleaded the law of limitation in bar of the suit, denying totally having ever tenanted the land from respondent or paid her rent for it.

The moonsiff (Baboo Ramtaruk Rai) held it proved that appellant was a mere tenant of the land, of which respondent was held proprietor; and decreed possession, with mesne profits for 12 years up to the date of suit, in respondent's favor.

Appellant now pleads, among other matters, that the suit is barred by the law of limitation.

JUDGMENT.

To me it seems that the suit is barred by the law. The ordinary time allowed for instituting suits is, according to Section 14, Regulation III., 1793, 12 years. Respondent must be held to be dispossessed from the period from which her rent has been withheld, and she admits that period to exceed 12 years; but she asserts her suit to be legal, because appellant's possession was acquired by fraud, and Clause 1, Section 3, Regulation II., 1805 excepts cases in which the person in possession of real property "shall have acquired possession thereof by violence, fraud, or any other unjust or dishonest means whatever." This law, however, does not appear to me applicable to the present suit, for appellant's possession is asserted to have been by tenancy under which he paid rent up to 1234, and a tenant paying for a time, and then withholding his rent cannot be said to have "acquired possession" by violence, fraud, or any other

unjust or dishonest means whatever," the acquisition of his possession having preceded the alleged injustice and dishonesty.

IT IS THEREFORE ORDERED,

That the appeal be decreed, the decree of the moonsiff reversed, and suit dismissed, with costs.

THE 18TH MARCH 1850.

No. 12 of 1849.

Appeal from the decision of Moonshee Bishnu Cherrun Das, Acting Moonsiff of Latoo, dated 25th December 1848.

Goureekanth Surmah and Sirikant Surmah, Appellants,

versus

Domun Ram and others, Respondents.

RESPONDENTS sued to recover the sum paid by them under a summary decree, with costs and interest, declaring appellants to have instigated the summary suit, a fraudulent one.

Goureekanth filed an answer, repudiating all participation in the summary suit.

The acting moonsiff (Moonshee Bishnu Cherrun Das) held appellants proved to have participated in the fraudulent summary proceedings, under which the money was exacted from respondents, and decreed against them and others.

Appellants now urge that they had nothing to do with the summary suit.

JUDGMENT.

Sirikant did not appear before the moonsiff, and puts his absence on the double ground of indisposition and supposition that it was unnecessary for him to appear, as a person merely sued as colluding with other persons; but this plea and this appellant's appeal appear to me inadmissible; and as, after examination of the evidence, I am of opinion that the collusion and active participation of Goureekanth in the summary proceedings, while he must have known them to be fraudulent, is clearly shown, I see no reason to interfere with the moonsiff's decree. Madhub Chunder, who, I observe, has filed a petition in the suit, has not regularly appealed, that further notice should be taken of him.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 18TH MARCH 1850.

No. 199 of 1849.

*Appeal from the decision of Baboo Sharodapershad, Moonsiff of Azmeree-
gunge, dated 16th November 1849.*

Birjooram Das, Appellant,

versus

Jugernath Surmah, Respondent.

RESPONDENT sued to recover, with interest, 34 rupees lent to appellant and his late brother, under a bond dated 12th Kartick 1250, and averred to have been stolen from his box, while he was in jail, on the 18th Poos 1252.

Appellant denied the transaction, and imputed the suit to enmity on account of his having, when robbed on the 8th Assin 1250, caused the houses of some of respondent's ryuts to be searched, though without effect, and having refused to pay 50 rupees the "durbar khurch" of the ryuts.

The moonsiff (Baboo Sharodapershad) held respondent's claim proved, and decreed accordingly.

Appellant now urges, that respondent's witnesses are under his influence, that it is not likely that he would have borrowed from respondent in Kartick, after having caused the houses to be searched in Assin; and that the demand of 50 rupees "durbar khurch" indicated the falsehood of the claim.

JUDGMENT.

Respondent appears to have made out the list of bonds stolen from him which he filed in the magistrate's court, from a "towjee" which he states himself to possess; and this "towjee," together with any evidence which he may be able to give in proof of its authenticity, should have been, and must be, called for by the moonsiff.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the purpose designated above. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass proper orders in regard to the remaining costs of this appeal.

THE 19TH MARCH 1850.

No. 200 of 1849.

*Appeal from the decision of Baboo Chunderkishwur Rai, Moonsiff of
Hingajeeah, dated 7th December 1849.*

Shamram Deb, Appellant,

versus

Sheetaram Nao, Respondent.

APPELLANT sued for 11 annas, 6 pie, balance of the rent of 2 kear 3 pao of land in talooka Bydnath, No. 1720, under a kuboolut, to pay 1 rupee, 11 annas, 6 pie for the same, executed on the

5th Bysakh 1252, according to which the rent had been paid in full for 1252 and 1253, with 1 rupee for 1254 paid on the 26th Bysakh 1254.

Respondent filed an answer resisting the claim, denying the kubooleut, and pleading that the land in rent in suit appertains to talooka Sona Chand No. 21, the property of Mahomed Idris Khan; that appellant was his (Mahomed Idris*) gomashita, to whom respondent gave a kubooleut in favor of Mahomed Idris and his heirs, paying rent; that appellant has been discharged from the zemindar's service, and had sued him, respondent, because he would not enter into his views; that Surbanee Dasee, widow of Sona Chand Chowdree, gave the land of the rent in suit, as burmoter, to Ramlochun Udheekaree, who received the rent of it up to the time of sale, and has since been presented with other land, in exchange for it, by Surbanee Dasee; and that appellant, while gomashita, granted receipts for the rent of the land, specifying it to be part of talooka No. 21.

Appellant, in reply, stated that the land of talooka Sona Chand, on account of which he received rent on behalf of Mahomed Idris, to be different from the land of the rent in suit, which was never given to Ramlochun Udheekaree; and that when a butwara or partition took place between Surbanee Dasee and Mahomed Moazum Chowdree, the land of the rent in suit was included as part of talooka Bydnath.

Khoodeja Banoo and others, heirs of Mahomed Idris, petitioned in support of respondent: one Sheebram filed a petition, declaring the land to be in talooka Bydnath, but to be his purchase and not appellant's: and one Gopeebullub presented a petition of similar import.

The moonsiff (Baboo Chunderkishwur Rai) distrusted the evidence to the kubooleut adduced by appellant, on account of discrepancies, and, after instituting local investigation through two separate ameens, dismissed the suit.

Appellant now urges that the payment of rent by respondent is proved; that the ameens acted partially; that respondent's witnesses are under his influence; and that his claim is established, &c.

JUDGMENT.

The issue of this suit depends on the truth of the kubooleut which appellant asserts respondent to have executed in his favor: and, as I concur with the moonsiff in deeming the evidence of appellant's witnesses to be, on the grounds detailed by the moonsiff, unworthy of reliance,

IT IS ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 20TH MARCH 1850.

No. 8 of 1850.

Appeal from the decision of Moonshee Nuzzeer Oodeen Mahomed, Moonsiff of Parkool, dated 15th December 1849.

Bulram Das, Appellant,

versus

Bishno Das and others, Respondents.

APPELLANT sued for rupees 150, damages for abuse.

Bishnoo Das, Birjoo Ram, and Neemanund resisted the claim, countercharging abuse against appellant.

The moonsiff (Moonshee Nuzzeer Oodeen Mahomed,) after two local investigations by ameens, who could obtain nothing but hearsay evidence, dismissed the claim, not being able to trust the testimony of five witnesses adduced by appellant, who had been opposed to Neemanund in a suit preferred by him under Act IV., 1840, in which appellant was the agent of the said witnesses.

Appellants now urge that their claim is established, and that the actual giver of the abuse had nothing to do with the Act IV. suit, &c.

JUDGMENT.

The abuse is declared to have been given at the instance of Neemanund, but the only evidence is that of five witnesses who were that person's opponents in the Act IV. suit; and, though the abuse is not improbable, I am unable to rely on their testimony.

It is therefore ordered,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 21ST MARCH 1850.

No. 192 of 1849.

Appeal from the decision of Moonshee Nuzzeer Oodeen Mahomed, Moonsiff of Parkool, dated 9th November 1849.

Mahomed Uzeem, Appellant,

versus

Nuzzer Mahomed and others, Respondents.

RESPONDENTS' plaint set forth that appellant sued them summarily for rent of 3 kears of homestead in talooka Doolubh Khan, and 4 kears of cultivated land in talooka Ariz Khan, kitta Pattarear Bund, under a kubooleut; obtained a decree; attached a steer, their property, worth 4 rupees, and caused to be sold for 2 rupees 8 annas: that they are not tenants, by kubooleut or otherwise, of any land belonging to appellant: that their ancestors originally owned half of

the talooka abovenamed : that they themselves still own a portion of land and homestead in talooka Ariz Khan, of which appellant, their partner, wishes to dispossess them, preferring complaints in the criminal court, and, in failure of them, the summary suit under Regulation VII, 1799, and they finally sued for reversal of the summary decree, with costs.

Appellant filed an answer, averring purchase of the half of talooka Doolubh Khan, which had belonged to respondents' ancestors in 1235 B. S., from two persons who had bought it from respondents' father, and also his half of talooka Ariz Khan, under six deeds of sale of different dates, from respondents' father and aunt, who gave kubooleuts for their homestead, 5 kears, paying rent till their death ; that respondents afterwards occupied 3 kears of the said homestead, giving an engagement for the rent of it, and 4 kears of land in talooka Ariz Khan, for which they paid rent for 1252, but withheld it for 1253, whence the summary suit, that the homestead was wrongly measured, in the time of Mr. collector Tucker, in talooka Ariz Khan, but found by arbitrators to be in talooka Doolubh Khan.

The moonsiff (Moonshee Nuzzeer Oodeen Mahomed) held the homestead proved to be in talooka Ariz Khan. He observed that appellant had adduced no documentary evidence in support of his defence ; that the kubooleut had been produced in the summary suit with two witnesses, but that these were residents of other villages, while the kubooleut was contradicted by the chitta of Mr. Tucker's measurement, showing the homestead to be in talooka Ariz Khan ; that respondents had filed copy of a petition of Mahomed Zakir, appellant's nephew, setting forth that he and others had cultivated the land in Pattarear Bund in 1253, the year of the rent in suit, while respondents had carried off the crop ; that the original kubooleut not being forthcoming, the signatures could not be compared ; that the evidence of respondents' witnesses and the result of a local investigation showed that respondents had long occupied their homestead, and tenanted no land in Pattarear Bund : and, after noticing appellant's petition, averring that his document had been snatched away from him, he decreed the claim.

Appellant now urges that the plaint is defective, in that the value of the steer is omitted in the claim it sets forth, an omission which the petition filed by respondents cannot be held to have legally supplied ; that his claim is proved by the record of the summary suit and the evidence of his witnesses ; that three witnesses adduced by respondents are connected with them ; and that respondents cannot write, so that it cannot be supposed that the kubooleut is withheld, lest a comparison of signatures be made, &c. &c.

JUDGMENT.

The value of the steer is stated in the plaint : it is omitted, evidently inadvertently, at the foot, but the object of the plaint is

perfectly clear, and I therefore see no ground for throwing out the suit on the plea of omission. The issue of the case then depends on whether credit can be given to the kubooleut and the asserted previous payment of rent. The kubooleut may have been taken from appellant, though I am by no means satisfied, by the evidence adduced before the magistrate by appellant, who made no complaint till 12 days after the date of the assault, though the assault is averred to have taken place close to the magistrate's cutcherry, that it was so abstracted. But, however this may be, I am clearly of opinion that the evidence in support of the kubooleut and previous payment of rent cannot be received as proof. The copy of the kubooleut sets forth that respondents are tenants, not of 4 kears in *Pattarear Bund*, but of *Pattarear Bund comprising 4 kears*, and it is contradicted by the petition of Mahomud Zakir, appellant's nephew, setting forth that he and others had cultivated the parcel of land called Pattarear Bund, in the year of the rent in suit, and that respondents had carried off the crop. Being then of opinion that neither the kubooleut nor previous payment of rent is proved, I must hold the summary decree a decision which is unwarranted by the evidence, and must affirm the decree of the lower court.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 25TH MARCH 1850.

No. 15 of 1849.

Appeal from the decision of Moulvee Suadut Alee, Principal Sudder Ameen, dated 16th July, 1849.

Ram Ram Doss, Appellant,

versus

Moolookchaund Das and others, Respondents.

APPELLANT, the proprietor of a talooka settled at the time of the decennial settlement, sued for 3 parcels of land, with mesne profits, one of which parcels has been settled with respondents, as part and parcel of the resumed deoter tenement, in the name of Ghurchunder, by the deputy collector, whose decision was affirmed by the collector and revenue commissioner, the last functionary giving permission to contest the matter in the civil court.

The principal sudder ameen (Moulvee Suadut Alee) decreed two parcels in appellant's favor, dismissing his claim to the parcel settled as part of the resumed tenement with respondents, holding non-jurisdiction in relation to that parcel, in accordance with the precedent of the Sudder Court in the matter of the petition of Hergobind Ghose, dated 17th July 1847.

Appellant now mainly relies on the order of the revenue commissioner. He urges that the precedent quoted is not against him, and notices that he has appealed to the special commissioner.

JUDGMENT.

Appellant's claim to the parcel of land settled as part of the resumed tenement, notwithstanding the order of the revenue commissioner, which cannot alter the law, appears to me to be incognizable by the civil court, and cognizable only by the special commissioner, under the precedent above mentioned.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the principal sudder ameen affirmed, with costs.

THE 25TH MARCH 1850.

No. 5 of 1850.

Appeal from the decision of Moonshee Nuzzeer Oodeen Mahomed, Moonsiff of Parkool, dated 10th December 1849.

Gholam Zukee and others, Appellants,

versus

Sheik Jeetoo and others, Respondents.

RESPONDENTS sued, stating that the late Moraree Chunder, zemindar of pergunnah Dewadee, gave them a pottah for 15 koolbas of jungle land in mouzah Megna Berantee, in 1240 B. S.; that they raised a crop of rice on 5 koolbas, 5 jet, 1 rog of the land, which appellants carried off and the value of which is claimed.

Appellants resisted the claim and alleged that there are 16 or 17 koolbas of land including the land of the crop in suit, appertaining to talookas Ootum Chund, &c. purchased by them, and talooka Shibance Dasee bought by Ubdool Ghuffoor and others, that they and their tenants reaped the crop of the said land, which did not produce so much as respondents have declared; and that the boundaries stated by respondents are false, &c.

The moonsiff (Moonshee Nuzzeer Oodeen Mahomed) held it proved that respondents possessed the land under their pottah, raised the crop, and were deprived of it to the extent and value and in the manner stated by them: and, after noticing that the chitta filed by appellants did not agree with the boundaries declared by them; and that their vakeels could not point out how they did; and that appellants had suffered a year and four months from the date on which it was called for to lapse, without adducing evidence in support of their defence, he decreed the claim.

Appellants now urge that their vakeels in the moonsiff of Parkool, to which the suit had been transferred from Latoo, were not aware that their witnesses had been required, &c.

JUDGMENT.

I am of opinion that the decree in this suit must, under the circumstances detailed in it, be affirmed: appellant was bound to produce his witnesses before the moonsiff of Parkool, and the claim is fully supported by evidence.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed.

ZILLAH TIPPERAH.

PRESENT: T. BRUCE, Esq., JUDGE.

THE 12TH MARCH 1850.

Case No. 6 of 1849.

*Appeal from a decision of Caze Mahomed Ali, Principal Sudder Ameen,
dated 20th January 1849.*

Gopeechunder Nundee, (Defendant,) Appellant,

versus

Nubkisto Rai and Rajkisto Rai, (Plaintiffs,) Respondents.

SUIT laid at Company's rupees 526-5-7.

This suit is instituted by the representatives of the auction purchaser of the 7 anna share of pergunnah Serael, to obtain possession, with mesne profits from date of purchase of 1 droon 15 kannees of land held as a mocrurree tenure.

The defendant Gopeechunder pleaded, *inter alia*, that the tenure had been sold in Assin 1253 B. S., by his deceased brother, Ram Chunder, the original grantee, to one Bhyrubchunder Bhuttacharje; that he, Gopeechunder, had never been possessed of any interest in the tenure; and that he was not, as was wrongly affirmed in the plaint, the guardian of his deceased brother's minor daughter, her guardian being Musst. Anund Mye, her aunt by the father's side.

Bhyrubchunder and Anund Mye were subsequently made defendants, the former, as vendee of the tenure, and the latter as guardian of Ramchunder's daughter; neither of them appeared, however.

The principal sudder ameen gave judgment against all the defendants, on the grounds that the tenure, having been created only in the year 1241 B. S., was clearly voidable, on the parent estate being sold for arrears of Government revenue; and that it appeared from the report of an ameen, that the original grantee, Ramchunder, was succeeded in his estate, real and personal, by his brother, the defendant Gopeechunder, and that Bhyrubchunder, the alleged vendee, had latterly collected a portion of the rents of the tenure.

An appeal is preferred from this decision by Gopeechunder, on the ground, mainly, that he should not have been made liable for any portion of the mesne profits decreed, the tenure never having belonged to him, and he not having succeeded his brother.

That the tenure is voidable, there can be no manner of doubt; but I am of opinion that the court below has arrived at the conclusion that appellant (Gopeechunder) is liable, on grounds by no means satisfactory, namely, the somewhat summary report of an

ameen, who states that Ramchunder, the original grantee, was succeeded in the tenure by appellant, but how appellant should have succeeded his brother, if, as is affirmed by appellant, the tenure was sold to Bhyrubchunder, during Ramchunder's life time, does not appear, and, although the ameen reports that Bhyrubchunder had collected a part of the rents, he admits that he could obtain no written evidence of appellant having done so.

Appellant ought to have been called upon for proof of his plea that the tenure was sold to Bhyrubchunder during Ramchunder's lifetime, and that he, appellant, had never had anything to do with it. As this has not been done, I have nothing to guide me but the ameen's report, which is wholly insufficient to enable me to come to a right judgment in the case. I therefore reverse the principal sudder ameen's decision, as based on insufficient investigation, and remand the suit for re-consideration, after appellant shall have been given an opportunity of proving the plea in question: and, if necessary, a fresh local enquiry may take place. The principal sudder ameen will at the same time consider, and pass orders upon the objections advanced by appellant to the ameen's report, in his petition filed 4th September 1848: and he will further consider the other pleas advanced by appellant, in his answer in the court below. He will also declare distinctly the circumstances under which the different defendants have become liable, should he still be of opinion that all or any of them are liable. Under the decision reversed, both appellant and Anund Mye are made liable, in addition to appellant's other liability, as guardians of Ramchunder's daughter: but on what grounds this is done, does not appear.

Stamp duty on petition of appeal to be refunded.

THE 12TH MARCH 1850.

Case No. 9 of 1849.

Appeal from a decision of Cazeer Mahomed Ali, Principal Sudder Ameen, dated 14th April 1849.

Rajah Suttchurn Ghosal, (Plaintiff,) Appellant,

versus

Madhubchunder and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 3,634-0-2.

This is a suit for arrears of rent, due on certain instalment bonds executed under the following circumstances—with interest from the dates on which the principal became payable.

The plaintiff is the proprietor of tuppeh Jeynugger: the defendants are the proprietors of a dependant talook in that estate.

The rent of the talook having fallen into balance, twelve of the defaulters came forward, voluntarily, to enter into arrangements for the gradual liquidation of their arrears, and, after paying up a

small part of them, executed instalment bonds in plaintiff's favor, for a further portion, proportionate to the extent of their interest in the talook. Two of the defaulters, however, remained recusant.

Some time afterwards plaintiff sued the two recusant defaulters, in the court of the sudder ameen, for their share of the outstanding balances; but the talook being joint and undivided, he included the non-recusant defaulters among the defendants. The sudder ameen held that, as the talook was joint and undivided, the defendants, both recusant and non-recusant, were jointly liable. He therefore gave judgment against them all.

The present suit is instituted for the recovery of the amount of the instalment bonds executed by the twelve non-recusant defaulters; but, on the principle which governed the sudder ameen's decision, as to the joint liability of all the proprietors of the talook, they, or their representatives, are all made defendants now.

None of the defendants appeared in the court below; but the case was nevertheless decided in their favor, on the following grounds. *First*, that the suit was barred by lapse of time; more than twelve years having elapsed since the arrears of rent included in the instalment bonds originally became due, and the bonds themselves not having been duly proved. The grounds assigned by the principal sudder ameen for rejecting the bonds, were, that the situation in life of the witnesses brought to prove them was not such as to render them credible witnesses: that two of them were servants: and further, that they made no mention of the payment of any arrears at the time the bonds were executed, as stated in the plaint. *Secondly*, that the present claim was inconsistent with the former decree, that of the sudder ameen, which made all the talookdars responsible for a part of the rent of the talook.

An appeal is preferred from this decision of the principal sudder ameen, by the plaintiff; but the defendants, as in the court below, do not appear.

I dissent from the principal sudder ameen's judgment altogether. *First*, I am of opinion that the instalment bonds were rejected on grounds wholly insufficient, and consequently, that there has been no lapse of time, the bonds having been executed only in 1249 B. S., (1842.) No objection is raised by the principal sudder ameen, to the evidence, taken *per se*: it is absurd to say that the testimony of mohurrirs, mirdahs, or cultivators—such are these witnesses—if otherwise unexceptionable, is not admissible in such cases; or, that *service* incapacitates a man from being a witness: the witnesses, moreover, were not brought to prove the money payments alluded to; and, which is more, the principal sudder ameen did not examine them on the subject. Not the slightest suspicion attaches to the bonds, the parties concerned do not appear to deny them, and the transaction connected with them formed the foundation of the former suit, in the sudder ameen's court, in 1845; the iden-

tical bonds indeed were mentioned in that case. *Secondly*, I am not of opinion that the present claim is invalidated by the former decree. The parties who executed the bonds, if aggrieved by any act of their recusant co-sharers, may have their remedy at law; but they are clearly liable for that portion of the rents of the talook which, by their own voluntary act, they made themselves responsible for, when executing the bonds.

I reverse the decision appealed from, and give the plaintiffs a decree, against the parties (or their heirs, being defendants) by whom the bonds were severally executed: the other defendants to be exonerated of liability. Costs payable by the defendants against whom the decree is given jointly.

THE 16TH MARCH 1850.

Case No. 12 of 1849.

Appeal from a decision of Cazeer Mahomed Ali, Principal Sudder Ameen, dated 16th June 1849.

Gobind Bukht, (Defendant,) Appellant,
versus

Ramlochan Das, guardian of Ramlochan Dass, a minor son of Musst. Oomatarah, deceased, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 451.

This suit was originally instituted to prevent the sale of the rights and interests of the defendant, Oomatarah, in three dependent talooks, in execution of a decree against the said Oomatarah, in favor of the defendant, Gobind Bukht, but, the sale taking place while the suit was pending, a supplemental plaint was admitted, by which the purchasers were also made defendants, with a view to the annulment of the sale.

The plaintiff claims the talooks under a bill of sale executed by the defendants Oomatarah and Dagonee, in Chyte 1254 Tipperah, in favor of the minor's mother Oomatarah, deceased. The talooks belonged originally to one Gungaram; and of the vendors, Oomatarah was his daughter-in-law, and Dagonee his widow: as defendants in this case, they both admit the plaintiff's title.

The defendant Gobind Bukht, the original decree-holder, pleaded that the talooks, the subject of suit, together with three other tenures of the same kind, were sold to him by the defendant Oomatarah alone, in Maugh 1248 Tipperah; the transfer taking immediate effect so far as the three last mentioned tenures were concerned, but the vendor retaining a life interest in the talooks, the subject of suit. This life interest it was, he affirmed, that he had caused to be attached in execution of his decree.

The purchasers of the defendant Oomatarah's interest in the talooks did not appear.

The principal sudder ameen gave judgment for the plaintiff; upholding the transfer of 1254; annulling that of 1248; and cancelling the sale of the talooks, *i. e.*, of the defendant Oomatarah's interest in them.

The grounds of the principal sudder ameen's decision are as follow:—*First*, with respect to the transfer of 1254, that it was established by the production of the bill of sale, the evidence of the subscribing witnesses, and the admission of the vendors: and that it was proved to have been made to enable the vendors to liquidate the debts of Oomatarah's deceased husband Ramkishore, of his father Gungaram, to whom the talooks originally belonged, and from whom Ramkishore had inherited them: the circumstance of Dagonee's name appearing in the deed, the principal sudder ameen appeared to consider a matter of no moment, either one way or another, she being only Ramkishore's step-mother, and therefore not his heir. *Secondly*, with respect to the alleged transfer of 1248, the principal sudder ameen rejected it, on the grounds that the deed on which it was based showed that the party executing it remained in possession of the three talooks the subject of suit: that, under the Hindoo law, the party said to have executed the deed had not the power to alienate, unless to enable her to liquidate her husband's debts, or for other special reasons; and that no proofs of the existence of any such special reasons had been filed: that the party said to have executed the deed denied having done so: that the witnesses brought to prove the deed, were not of a station in life from which witnesses to such important transactions as the transfer of land would have been taken; that the document had not been registered: that it did not specify particulars of Ramkishore's liabilities: and that the talooks were not liable for Oomatarah's debts, under the Hindoo law. The principal sudder ameen stated further that, owing to the death of the defendant Oomatarah, since the suit was instituted, plaintiff had become proprietor of the talooks by right of inheritance.

An appeal is preferred from this decision by the defendant Gobind Bukht, on the following grounds:—*first*, that the transfer of 1248, was valid under the Hindoo law, it having been made in order to the liquidation of the debts of the vendor's husband and his father: *secondly*, that the deed having been duly proved, and mention being made in it of the circumstances under which the transfer took place, there was no want of evidence on the latter point; but that appellant was prepared to file copy of a decree of court, from which it would appear that Ramkishore, the defendant Oomatarah, and appellant, had mutually defended a suit for possession of the talooks in question: *thirdly*, that one of the witnesses objected to by the principal sudder ameen, is of the same caste as the parties; and that other witnesses were available: *fourthly*, that appellant does not deny that the vendor remained in possession during life: *fifthly*, that the minor's mother had appeared as a claimant for the talooks, in a summary suit,

on the grounds now advanced; but that the suit had been struck off on default, claimant having failed to produce the proofs now filed, that appellant's witnesses had proved Oomatarah to be in possession, after the date of the alleged transfer of 1254, and that the same thing could be proved now, by local enquiry; and that, according to a precedent of the late provincial court of appeal, the sale of 1254 was void: *sixthly*, that the plaintiff's claim having been founded on purchase, he was not entitled to a decree on the ground of inheritance: *seventhly*, that appellant's bill of sale had been attested by the pergunnah cazee, which is not the case with that of the adverse party.

I am of opinion that the grounds on which the principal sudder ameen's decision is impugned, are not such as to justify any interference with it, so far at least as relates to the decretal order in plaintiff's favor. Besides the reasons given by the principal sudder ameen, for rejecting appellant's claims, I find in documents filed by plaintiff,—a bundobustee chittee granted by the rajah of Tipperah in the year 1247; copy of a summary decree under Regulation VII. 1799; and copy of the petition presented to the civil court by appellant himself, praying for the execution of his decree against the defendant Oomatarah,—very strong evidence against appellant's claims: the two first mentioned documents are conclusive against his plea of possession from 1242 to 1248, under a deed of gift granted to him in the former year by the defendant Oomatarah, which transfer, he affirms, was revoked in favor of the subsequent one of 1248, and the last named document is equally against the transfer of 1248, inasmuch as the petition not only makes no mention of appellant being then possessed of any interest in the talooks, but specifically declares two of them to be in the joint possession of Dagonee and Oomatarah, which is not only opposed to his own plea, but in favor of plaintiff's.

The *first* plea of the appeal is nothing to the point, the evidence in favor of the alleged transfer being rejected: the same is to be said of the *second*; and further, that the fact of the parties named having defended such a suit, would be quite insufficient to prove that circumstances existed, such as to render valid, under the Hindoo law, the sale of her deceased husband's property, by Oomatarah: with regard to the *third* plea, it is sufficient to state that appellant had ample time to produce more witnesses, the suit having been before the courts since 1846: the admission involved in the *fourth* plea is justly taken by the principal sudder ameen, as an argument against the probability of any transfer having taken place in 1248: with respect to the *fifth* set of pleas, I answer that the object of the present suit is virtually the annulment of the order in the summary suit referred to, on a more formal investigation of the merits of the case; and although such previous default might, in some cases, turn the scale, in adjudicating on contending claims, yet that the evidence in this case is not of such a character; that the

witnesses alluded to are the same whose evidence in relation to the execution of the bill of sale had previously been considered untrustworthy; that the evidence against appellant's title is too strong to hinge upon the report of an ameen; and that the precedent referred to is not only not generally applicable, but relates to a point of law, to be considered only after proof of facts: with respect to the *sixth* plea, the principal sudder ameen ought to have confined himself to the merits of plaintiff's claim, as set forth in the plaint, and not to have gone into the question of right by inheritance: the *seventh* plea involves a point which can only be considered relatively to other evidence; and the other evidence in this case being strongly against appellant, the plea does not avail.

Under these circumstances, I affirm the principal sudder ameen's decision, with the exception of that part of it which declares the talooks to belong to plaintiff by right of inheritance. Appeal dismissed, with all costs.

THE 16TH MARCH 1850.

Case No. 13 of 1849.

Appeal from a decision of Caze Mahomed Ali, Principal Sudder Ameen, dated 7th July 1849.

Nubkishen Rai and Rajkishen Rai, (Plaintiffs,) Appellants,
versus

Lall Mahomed and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 511-8-5-18.

This is a suit instituted by zemindars, for possession, with mesne profits of 8 kauees of land claimed by the defendants as lakhiraj.

The court below, being of opinion that the plaintiffs had failed to prove previous possession by the zemindar, dismissed the claim, leaving untouched the question of the validity or otherwise of the tenure.

An appeal is preferred by the plaintiffs.

I am of opinion that the principal sudder ameen has acted on a wrong principle, in throwing the burden of proof upon the plaintiffs. He refers to a previous suit, in which it was held by this court, that that principle ought to have been followed; but he has quite mistaken the nature of the two cases. The present suit is instituted with a view to obtain possession of an invalid rent-free tenure, the value of the suit being assumed at eighteen times the amount annual rent: in the former suit, the claim was founded on a plea of ousting by the defendant, or of withholding the rent of land for which rent had been paid up to a given period, on the plea that the land was rent-free. In the latter description of suits the *onus probandi* rests with the plaintiff: in the former description of suits, and therefore in the present one, it rests with the defendant.

The principal sudder ameen's decision is annulled, and the case remanded to be dealt with on the above principle.

The value of the stamp on which the petition of appeal is written will be refunded.

THE 20TH MARCH 1850.

Appeals from a decision of Moonshee Rumeezooddeen, Moonsiff of Noornuggur, dated 23rd June 1849.

Case No. 149 of 1849.

Neetyechand Shah, (Defendant,) Appellant,

versus

Dhoonee Chand, (Plaintiff,) Respondent.

Case No. 154 of 1849.

Kishtomohun Shah, (Defendant,) Appellant,

versus

Dhoonee Chand, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 109.

These are appeals from one and the same decision.

The parties are the same as in cases, Nos. 55 and 60 of 1849, decided 28th May last, and the circumstances are almost identical.

On the 24th July 1837, Kishtomohun Shah and Holasaram Shah obtained a decree in the court of the moonsiff of Noornuggur, against Rammohun Doss, on two bonds, dated 5th Bhadoon 1234 Tipperah, for rupees 204.

While the suit was pending, Dhoonee Chand, the plaintiff in the present case, appeared as a claimant, affirming that the bonds had been granted to Kishtomohun and Holasaram, as members of a mercantile firm in which he (Dhoonee Chand) had been a partner; and that, by the terms of an arrangement entered into by the partners, on the dissolution of the firm in 1245, he possessed a 4 anna interest in the bonds, as forming a portion of the joint assets. His claim was not investigated, as his name did not appear in the bonds, but he was referred for his remedy to a suit against his partners; and on the 3rd March 1849, he instituted the present suit, for his share of the amount decreed in the former suit.

The principal defendants are Kishtomohun, one of the plaintiffs in the former suit, together with his co-sharers Ramsurrun and Rajkissen, and Neetyechand and Dingoo Churn, heirs of Holasaram, the other plaintiff. The original bond debtors are made defendants *pro forma*.

By the terms of the arrangement entered into by the partners on the dissolution of the late firm, the interest of the present plaintiff Dhoonee Chand, in certain assets, of which the bonds formed a part,

was declared to amount to a 4 anna share; that of the defendant Kishtomohur and his co-sharers to an 8 anna share; and that of the defendant Holasaram to a 4 anna share.

In the present suit, the principal defendants alone appeared. They admitted the existence of the late firm, and plaintiff's interest therein, to the extent set forth in the plaint; neither did they deny his right to share in the proceeds of the former decree; but they pleaded in bar of the claim, that more than 12 years had elapsed since the bonds were executed, and the subsequent arrangement of 1245 entered into, to date of suit; and that the present claim, and the claims the subject of the cases referred to above, as having been decided in May last, ought to have been included in one suit.

Neetyechand pleaded further, that plaintiff had received his share of the amount recovered under the former decree.

Kishtomohun and his co-sharers pleaded for themselves, that, on plaintiff's own showing, they were not liable, it being admitted that they were possessed of an 8 anna interest in the former decree.

The moonsiff gave judgment for plaintiff, against the defendants, Kishtomohun, Neetyechand, and Dingoo, the first, as one of the plaintiffs in the former suit; and the two last, as heirs of Holasaram, the other plaintiff: the other defendants he exonerated from liability. The plea of the defendant Neetyechand, that plaintiff had received his share of the amount recovered under the former decree, was not proved.

From this decision, Neetyechand and Kishtomohun appeal separately.

Neetyechand pleads—*first*, that the suit ought to have been rejected, one and the same claim having been divided into several suits: the *second*, *third*, and *fourth* pleas are to the same effect, viz. that the proofs filed by plaintiff, as to the existence of the partnership, and the arrangement entered into by the partners on the dissolution of the firm, were insufficient: *fifthly*, that suit is barred by lapse of time: *sixthly*, that his plea in the court below, to the effect that plaintiff had received his share of the amount recovered under the former decree, ought not to operate to his (appellant's) disadvantage, if not allowed to operate to his benefit.

Kishtomohun pleads, to the same effect, and further that, being only an 8 anna sharer and having received only a moiety of the amount recovered under the former decree, he is not liable; and, that the moonsiff had not examined the witnesses whom he had named to prove that he had received only a moiety of the amount recovered.

The *first* of these pleas is untenable, the different suits not being founded on a general claim of partnership, but on distinct acts of misappropriation of joint assets, by individual partners: the *second*, *third*, and *fourth* pleas are futile, appellants never having denied the

partnership, or the arrangement entered into on its dissolution: the *fifth* plea is untenable, the cause of action not being the execution of the bonds, nor the arrangement entered into on the dissolution of the firm, but the decree obtained by the defendants on the bonds: the *sixth* plea is absurd. The separate plea advanced by Kishtomohun is of no avail. The former decree having been passed in his favor, conjointly with Holasaram, he must be held jointly responsible to plaintiff. The moonsiff examined two of appellant's witnesses, but they knew nothing of the matter; and with regard to the other two, who did not appear, the moonsiff justly observed that the point which they were named to prove was opposed to appellant's plea.

The moonsiff's decision is affirmed, and the appeal dismissed, respondent paying his own costs in appeal, as he was not summoned.

THE 20TH MARCH 1850.

Case No. 150 of 1849.

Appeal from a decision of Moonshee Rumeezooddeen, Moonsiff of Noor-nuggur, dated 23rd June 1849.

Neetyechand Shah, (Defendant,) Appellant,

versus

Dhooonee Chand, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 106-10-8.

The circumstances of this case and the parties are the same as in cases Nos. 149 and 154, decided this day, the only difference being that the decree on which the claim is founded having been given in favor of Holasaram, owing to the bond on which it was based having been in his name, the decree in the present case passed against his heirs only; and that no realization under the former decree is pleaded.

The appeal is dismissed, and the moonsiff's decision affirmed, respondent paying his own costs in appeal, as he was not summoned.

THE 20TH MARCH 1850.

Case No. 151 of 1849.

Appeal from a decision of Moonshee Rumeezooddeen, Moonsiff of Noor-nuggur, dated 23rd June 1849.

Neetyechand Shah, (Defendant,) Appellant,

versus

Dhooonee Chand, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 101-4-3.

The circumstances of this case and the parties are the same as in cases Nos. 149 and 154, decided this day, the only difference

being that appellant pleads that plaintiff (respondent) was possessed of no interest in the bond on which the decree, on which this claim is founded, was based. It appears from the record, however, that in the original case respondent appeared as a claimant; that the plaintiffs in that case did not make any objection to the claim; and, moreover, that the justness of the claim was deposed to by the plaintiff's own witnesses. And, as stated by the moonsiff, in the present case, the arrangement entered into by the partners in 1245, whereby all bonds in the name of any of the partners were declared to be the joint property of all, certain specified bonds excepted, this arrangement having been proved, it rested with appellant to show that the bond, the subject of the present claim, was not included in that arrangement.

Moonsiff's decree affirmed, and appeal dismissed, respondent paying his own costs in appeal, as he was not summoned.

THE 20TH MARCH 1850.

Case No. 153 of 1849.

Appeal from a decision of Moonshee Rumeezooddeen, Moonsiff of Noornuggur, dated 23rd June 1849.

Neetyechand Shah, (Defendant,) Appellant,

versus

Dhoonee Chand, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 23-14-5.

The circumstances of this case and the parties are the same as in case No. 151, decided this day: a similar order will issue.

THE 20TH MARCH 1850.

Case No. 152 of 1849.

Appeal from the decision of Moonshee Rumeezooddeen, Moonsiff of Noornugger, dated 23rd June 1849.

Neetyechand Shah, (Defendant,) Appellant,

versus

Ramsurrun Shah, Kishtomohun Shah, and Rajkishen Shah,
(Plaintiffs,) Respondents.

SUIT laid at Company's rupees 47-6-4-16.

The circumstances of this case are precisely the same as those of case No. 153, decided this day, except that the plaintiffs are different; different partners having instituted two different suits: the original decree on which the two claims are founded is the same. A similar order will issue; but respondent is not present in this case.

THE 20TH MARCH 1850.

Case No. 175 of 1849.

Appeal from a decision of Moonshee Rumeezooddeen, Moonsiff of Noornuggur, dated 26th July 1849.

Dingoo Churn Shah, (Defendant,) Appellant,

versus

Dhoozee Chand, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 160.

The circumstances of this case are similar to those of case No. 151, decided this day, the only difference being that in this case the appellant is Dingoo Churn, one of Holasaram's heirs, whereas in case No. 151, Neetyechand, his other heir, was appellant.

A similar order will issue.

THE 20TH MARCH 1850.

Case No. 176 of 1849.

Appeal from a decision of Moonshee Rumeezooddeen, Moonsiff of Noornuggur, dated 26th July 1849.

Dingoo Churn, (Defendant,) Appellant,

versus

Dhoozee Chand, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 160.

The circumstances of this case are similar to those of case No. 151, decided this day, the only difference being that in this case Dingoo Churn, one of Holasaram's heirs, is appellant, whereas in case No. 151, his other heir, Neetyechand, was appellant.

A similar order will issue.

THE 20TH MARCH 1850.

Case No. 199 of 1849.

Appeal from a decision of Moonshee Rumeezooddeen, Moonsiff of Noornuggur, dated 30th August 1849.

Dingoo Churn, (Defendant,) Appellant,

versus

Dhoozee Chand, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 139-3-2.

The circumstances of this case are similar to those of case No. 151, decided this day, except that in this Dingoo Churn, one of Holasaram's heirs, is appellant, whereas in case No. 151, the appellant was Neetyechand, his other heir.

A similar order will issue.

THE 21ST MARCH 1850.

Case No. 11 of 1849.

Appeal from a decision of Cazeer Mahomed Ali, Principal Sudder Ameen dated 9th June, 1849.

Nubkishen Rai and Rajkishen Rai, (Plaintiffs,) Appellants,
versus

Seebchurn and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 126-14-1-15.

This suit is instituted by the zemindars of the 7 annas share of pergunnah Serael, for possession, with mesne profits, of certain lands claimed by the adverse party as a rent-free tenure.

The court below dismissed the suit, on failure of plaintiffs to prove that the zemindars had ever received rent for the land, or been in possession of it; but a claim to hold land rent-free being of the nature of a special plea, the burden of proof rests with the party advancing it. The principal sudder ameen seems to have confounded the claim of the plaintiffs, with a claim to recover possession of land formerly in their occupation. Had their claim been of the latter description, the principle on which he acted would have been correct; but the claim is, in fact, to resume an invalid rent-free tenure.

I annul the decision of the court below, and remand the case for decision on the principle indicated above. The value of the stamp on which the petition of appeal is written will be refunded. •

ZILLAH TIRHOOT.

PRESENT: JOHN FRENCH, ESQ., ADDITIONAL JUDGE.

THE 2ND MARCH 1850.

No. 268.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teghra and Beegoo Surah, dated 14th March 1848.

Chowdree Jhuroolall Singh, (Plaintiff,) Appellant,
versus

Mootee Raee and three others, (Defendants,) Respondents.

THIS suit was instituted to recover the sum of Company's rupees 139-10-3, on cultivation of 7 beegahs, 10 biswas; 3 dhoors of land in village Juggurnauthpore, pergunnah Bad Boosarce, with syar on mango and jack fruits from 1251 to 1253 Fuslee.

The plaint sets forth: the whole village was leased to the plaintiff for 10 years, from 1244 to 1253 Fuslee, during which period he held possession. The defendants having cultivated the land without a pottah, the plaintiff sued them for 2 years' rent for 1249 and 1250 Fuslee, at the rate of 4 rupees 10 annas per beegah, and obtained a decree for the same, which decree was affirmed on appeal, the execution of which is still pending. The defendants not having paid their rent from 1251 to 1253 Fuslee, therefore sues them again on the strength and proof of the former decree.

The defendants alleged they cultivated 6 beegahs only, and that at the rate of 2 rupees 8 annas per beegah; at the calculation of that rate, they are ready to discharge the rent. Without issuing the proclamation enjoined by Regulation V., 1812, the plaintiff is not entitled to increase of rent.

The moonsiff decreed in favor of the plaintiff the sum of Company's rupees 93-12-2½ on the grounds: the former decision filed by the plaintiff shows the cultivation of the defendants was 7 beegahs 3 dhoors, and from the putwarree's statement it appears the highest rate of the village is at 3 rupees per beegah. The attorneys of both the plaintiff and defendants having acquiesced to that rate, they both signed an ikrarnamah to that effect, the decree was accordingly for that rate.

The plaintiff appealed from this decision, urging: the former decision filed in this case dated 3rd of July 1845, proves the defendants

cultivated 7 beegahs, 10 biswas, 3 dhoors, on which 4 rupees 10 annas per beegah was decreed, and that decision was affirmed in appeal. The defendants did not prove they had cultivated less land or were entitled to decreased rate. The moonsiff made no enquiry respecting the syar, the calculation of the mangoe and the jack fruits, notwithstanding the defendants brought forward no proof against it: the decision of the moonsiff is therefore incorrect.

COURT.

Although the putwarree may have stated the highest rate of the village, and that for land of a similar description cultivated by the defendants, to be at the rate of 3 rupees per beegah, the statement of the putwarree may be doubted, as at that period the plaintiff's lease of the village had expired.

The taking from the attornies of both parties a written ikrarnamah, or acquiescence to that rate, shows the moonsiff was doubtful of the correctness of the decision he was about to pass, therefore took the ikrarnamah, which measure was injudicial; for, if the point had been satisfactorily proved, the ikrarnamah was unnecessary. The former decree filed, which is said to have been appealed from and affirmed, (and that point is not denied by the adverse party,) permanently fixed the rate of rent payable in future by the defendants to the decreeholder to the expiration of his lease; by deciding contrary thereto reverses that decree, which no court has the power to do; otherwise, there would be no dependence to be placed on any decision.

The moonsiff has wholly omitted to state in his decision whether he allows or disallows the claim for rent on the proprietor's share of the produce of the mangoe and jack fruits, thereby shows the investigation to be incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for investigation wholly on the points above indicated.

The amount of stamp of the appeal plaint be returned to the appellants.

THE 6TH MARCH 1850.

No. 262.

*Regular Appeal from a decision passed by Kuzee Mahmood Allum,
Moonsiff of Coelee, dated 17th March 1848.*

Jankee Singh and four others, cautionary defendants, (Defendants,)
Appellants,
versus

Booneead Singh and three others, the sons of Butun Singh and
Muckun Singh, (Plaintiffs,) Respondents.

THE action is laid at Company's rupees 9-9-7-4, being three times the amount of annual revenue of the property under dispute.

The suit is instituted for the possession, and mutation of the names of the plaintiffs in the records of the collectorate, with separation of the revenue and lands of 3 annas share from the whole village of Bulwahee Kyrwah, pergunnah Kunnoleelee.

The purport of the plaint is: that 3 annas portion within 8 annas share of the abovementioned village was sold, under a conditional bill of sale, dated 7th Assin 1242, for 'Sicca rupees 1,750, by Bhowaneebuksh and Sheehoobuksh, defendants, on their own part, and also on behalf of their minor brother, Durga Churrun Singh, to Muckun Singh, one of the plaintiffs, and to Butun Singh, the father of the other plaintiffs, for the period of one year. After the expiry of that term, the customary application was made to the court under Regulation XVII., 1806; and the court, on the 28th of September 1836, passed an order to sue regularly for the foreclosure. A suit was accordingly instituted in the moonsiff's court at Coelec. That court, on the 9th of February 1839, after deduction of 2 annas on account of Sheehoobuksh Singh and Durga Churrun Singh, two minors, whose property could not be sold, decreed one anna as the share of Bhowaneebuksh Singh, who was of age and could dispose of his property. On appeal, under the investigation of Syud Abdool Wahid Khan, principal sudder ameen, the decision of the moonsiff was reversed, and the case nonsuited, as the amount of action should have been on the value of the property. Agreeably thereto, a suit on the value of the property was instituted; but not having filed the replication within six weeks, that suit was struck off the file on the 22nd September 1845, hence the cause of the present suit. The other defendants having made other purchases from the vendors, they are included in this suit as cautionary defendants.

The defendants Jankee Singh and four others allege: that Bhowaneebuksh Singh and Sheehoobuksh Singh sold to their grandfather Ruttoo Singh, under an absolute bill of sale, dated 29th of March 1836, $1\frac{1}{2}$ anna portion of the aforesaid village: a suit was instituted for possession: after a deduction of half an anna on account of the minor, one anna was decreed by Moulvee Neeamat Allee Khan on the 28th of December 1843, agreeably to which they have held possession: the suit against them by the plaintiff is unjust.

Defendants Sheehoobuksh Singh and Durga Churrun Singh allege: they neither wrote the bill of sale nor obtained any portion of the purchase money, and that their elder brother Bhowaneebuksh Singh had no power to dispose of their property.

Answer of Seeree Missir and ten others allege: that the three brothers Bhowaneebuksh Singh, Sheehoobuksh Singh, and Durga Churrun Singh sold to them, under an absolute bill of sale, 5 annas portion of the 8 annas share of the village, agreeably to which they are in possession. A dispute arose between the proprietors that

they were severally in possession of more or less than their respective shares: this they adjusted between themselves: their opinion on the subject was recorded and registered on the 7th of November 1845. In the former suit of the plaintiffs, they were exempted: to sue them again is therefore unjust.

The defendants Chotee Taqoor and six others allege: whatever remained to the vendors was entirely sold to them under absolute bills of sale, by which they are in possession, and will file the bills: there is a discrepancy in the evidence of the plaintiff's witnesses in the former case. Having been once directed to sue on the valuation of the property,—having done so, but on being struck off the file, having sued again on the amount of three years' annual revenue is contrary to the Regulations and detrimental to the Government fees.

The moonsiff passed a decision in favor of the plaintiffs on the following grounds. The decision passed in the first suit shows that it was ascertained two of the persons whose property was disposed of were minors. The same circumstance appears to be stated in the decision of the additional judge. The sale of the property of the minors was not proper. The cautionary defendants have not any documental proof of their respective allegations. From the copy of evidence filed in this case, which was given by the witnesses in the former suit, it is proved that the bill of sale was executed, the purchase money paid to, and received by, one of the defendants, Bhowaneebuksh Singh. Although one anna only was decreed to the plaintiffs in the former suit, yet as Bhowaneebuksh is sharer of one-third in the 8 annas share of the village, that one-third is decreed to the plaintiffs.

The cautionary defendants, Jankee Singh and four others, being dissatisfied, with the moonsiff's decision appealed, urging: that the moonsiff states they filed no document in proof of their allegation; their attorney solicited for extension of time to file their bill of sale, which was filed in another case in the judge's court, and for which application had been preferred, and that as soon as obtained it should be filed; but the moonsiff would not grant any postponement. On the mere perusal of copies, filed by the plaintiffs, of evidence of two witnesses, which had been given in the former case, was the decree passed in favor of the plaintiffs of one-third within 8 annas share, which materially affects them, the appellants, by decreasing the portion of their purchase. That they had obtained a decree for one anna from Moulvee Neeamut Allee Khan, the principal studder ameen, which decree was appealed from, and confirmed by the additional judge, and which bill of sale is of a prior date to the one in this suit.

COURT.

The suit is for the foreclosure of the property and conditional bill of sale of 3 annas portion within 8 annas share of village Bul-

wahee Kyrwah. The amount of action of the first suit of this case was laid at three times the amount of annual revenue of the property under litigation, was on appeal nonsuited by the then principal sudder ameen, Syud Abdool Wahid Khan, on the grounds the amount of action should be laid at the value of the property. The second suit was instituted on the valuation of the property, which, from the neglect of the plaintiffs to file their replication within the prescribed period of six weeks, was struck off the file. In this, the third suit, the amount of action is again laid at three times the amount of the annual revenue said to be in conformity to Regulation X., 1829. The document on which this suit is based, is a conditional bill of sale of 3 annas within 8 annas share of the village, yet the moonsiff has decreed in favor of the plaintiff, one-third of the 8 annas of the village, as the share of Bhowaneebuksh. No specification of share as belonging to either of the defendants is stated in the deed. The moonsiff has consequently exceeded the bounds of the documents and decided erroneously; moreover, he has not taken any notice of a part of the answer of Chotee Taqoor and others, who allege, the plaintiff having been once nonsuited and directed to sue on the valuation of the property, with which he complied, but on that being struck off the file, has again sued on the amount of three years' annual revenue, which is contrary to the former order and Regulation X., 1829, also detrimental to the fees of Government. The moonsiff should have inspected Schedule B., Article 8th, Regulation X., 1829, and expressed his sentiments thereon: not having done so the investigation is incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for re-investigation. The amount of stamp of appeal plaint to be returned to the appellants.

THE 6TH MARCH 1850.

No. 274.

Regular Appeal from a decision passed by Kazeè Mohummud Allum, Moonsiff of Coelee, dated 17th March 1848.

Secree Missir and ten others, (Defendants,) Appellants,

versus •

Booneead Singh and three others, the sons of Beetun Singh and Muckun Singh, (Plaintiffs,) Respondents.

THIS is an appeal from the decision passed in case No. 262, urging that the moonsiff would not grant two or three days' postponement of the case for to file their bills of sale, and hastily passed a decision, which will diminish their possession that they have held a considerable time. The remainder of the appeal is wholly foreign to the points of the decision.

COURT.

The original case having been returned for re-investigation, there is no further order necessary in this case, than to direct the amount of stamp of appeal plaint to be returned to the appellants.

THE 12TH MARCH 1850.

No. 389.

Regular Appeal from a decision passed by Moultee Syud Mohummud Mohamid Khan, second Principal Sudder Ameen of Moozufferpore, dated 18th May 1848.

Birjbeeharee Lall and Musst. Zameerun, (Appellants,) Defendants,

versus

Musst. Zeenutulnissa Begum *alias* Bechna Begum, (Plaintiff,) Respondent.

THE amount of action is laid at Company's rupees 1,949, being three times the amount of the annual revenue of the property under dispute, and the plaintiff sues for the recovery of 3 annas portion, within 12 annas share of the whole 16 annas of village Singeeah Bozurg (principal and dependencies,) pergunnah Surcesah, from the defendants. Birjbeeharee Lall, having, in the name of his wife, Musst. Zameerun, purchased at an auction in satisfaction of a decree of court against Noorjehan Begum and her sister Zeenutulnissa Begum, their rights and interests in the abovementioned village, assumed possession of the whole 12 annas of the village; within which the 3 annas portion had been gifted to the plaintiff by her husband Syud Mohummud Ali Khan, (since dead,) in lieu of her marriage dower. For which portion, together with other property, the husband of the plaintiff had obtained a decree of the provincial court of Patna, in a suit against Noorjehan Begum, five years prior to the auction of Noorjehan Begum's property, whose rights and interests only, together with those of her sister Zeenutulnissa Begum, were disposed of at the auction, conformably to Regulation VII., 1825, and Circular Orders, dated 4th of September 1840 and 2nd June 1842. At the time of the auction purchase effected by Birjbeeharee Lall, the village was exempt from revenue, but subsequent thereto it was assessed; at which period Birjbeeharee Lall deceitfully entered into a settlement with Government for the whole 12 annas of the village, as his auction purchase, which was afterwards cancelled, and a settlement for 3 annas was made with the plaintiff; against which Birjbeeharee Lall appealed to the revenue commissioner, but without awaiting for that officer's order thereon, he sued in the civil court on that account, and obtained a decree against the plaintiff, who was in that decision directed to sue for her proprietary right, which induced Birjbeeharee Lall to appeal, and that decision was amended and confirmed: hence the cause of this suit.

The defendants, in their answer, alleged the plaint was incorrect under several circumstances.

The 12 annas share of the village was put to auction for the recovery of costs due to the Government, and was purchased by them for the sum of Sicca rupees 12,200. The plaintiff petitioned the court to be put in possession of the disputed portion of the village, under execution of the decree of the provincial court, whereon the judge passed an order that Noorjehan Begum and Zeenutulnissa Begum had no rights remaining in the village, that the applicant could be put in possession of, but might be put in possession of the other villages, having previously sued for this property and obtained a decree, which on appeal was confirmed, thereby permanently established therein.

The second principal sudder ameen, Syud Ashruff Hoosein, passed a decision on the 7th of January 1845, in favor of the plaintiff, on the grounds: the share in the village appertaining to Noorjehan Begum was sold by auction agreeably to the sale proceedings on the 22nd of March 1833. It appearing from copy of a decision of the provincial court of Patna, dated 18th of November 1829, that it decreed to Mohummud Ali Khan this 3 annas portion of the village under the tumleeknamah, (or deed of gift,) granted by Noorjehan Begum, was prior to the sale thereof, hence the 3 annas portion was exempt from the sale; the plaintiff being the wife of the aforesaid Mohummud Ali Khan, it appertains to her under the marriage dower. The objections brought forward by the defendants are not admissible.

From this decision the defendants appealed, urging: previous to this suit the plaintiff had sued for 3 pie portion only as belonging to her; contrary thereto, now sues for 3 annas portion; to this and other objections no attention has been taken by the second principal sudder ameen. The decision is passed on the strength of the dain mohur, (or marriage dower,) which document is not filed. The rights of Noorjehan Begum and Zeenutulnissa Begum were sold at auction in satisfaction of a decree in favor of the Government.

This court, under date 9th of February 1846, considering the investigation incomplete, reversed the decision of the second principal sudder ameen, Syud Ashruff Hoosein, and returned the case for re-investigation, viz. to call on the plaintiff to file the dain mohur document, and to prove the same; carefully to peruse all the documents filed, and to consider their tenor and force of proof for which they were filed, particularly No. 61, proceeding passed by the additional judge, Mr. G. Gough, No. 62, proceeding of the Sudder Dewanny Adawlut, on the appeal from the proceeding of Mr. Gough, on the subject of the dain mohur. As sales in satisfaction of decrees of court dispose of all rights and interests held by the debtors at the time of sale, it will be necessary to ascertain, although Mohummud Ali Khan obtained a decree for the 3 annas portion from

the 12 annas held by Noorjehan Begum prior to the sale, whether he had been legally put in possession thereof prior to the sale; if not, under what Regulation, Circular Order, or Construction, is that 3 annas portion exempted from the sale, and reverses the proceeding No. 60, passed by the additional judge, Mr. Templer, not having been appealed from or a suit instituted for the possession of the 3 annas portion within three months from the date of Mr. Templer's proceeding; on the non-proof of the dain mohur, to ascertain whether on the demise of Mohommud Ali Khan, previous to the auction sale, his mother was seisin with three-fourths of his property, and whether that property was sold or not? The plaintiff having once instituted a suit for 3 pie only as her patrimony from her husband's estate, can she subsequently, legally sue for the 3 annas, &c.?

The re-investigation of the case came before the second principal sudder ameen, Moulvee Syud Mohamud Mohamid Khan, who, on the 18th of May 1848, decreed in favor of the plaintiff, on the grounds: previously to the auction taking place on the execution of decree of court against Noorjehan Begum and Zeenutulnissa Begum, the plaintiff's husband, Mohommud Ali Khan, had obtained a decree for the 3 annas portion, it being immersed in the marriage dower was excluded from the auction sale. The proceedings, &c. directed by the additional judge to be taken into consideration, being miscellaneous proceedings, do not inconvenience the investigation of this suit. It is necessary to enquire into the point, when the plaintiff having sued for 3 pie, whether she can or not again sue for 3 annas portion? On perusal of the decision of the principal sudder ameen, dated 11th of February 1830, it appears the plaintiff had sued for the 3 annas, and afterwards filed a supplementary petition to investigate also her right to the 3 pie; that suit was nonsuited from the circumstance of its being two distinct cases; the former suit for 3 pie, does not in any way injure the present suit for 3 annas.

From this decision the defendants appealed, urging: the second principal sudder ameen has not taken into consideration the circumstances directed by the additional judge. Syud Mohommud Ali Khan, the husband of plaintiff, obtained a decree for the 3 annas portion, but, prior to completion of the execution of that decree, died childless: beside the plaintiff, his widow, and Noorjehan Begum, his mother, there were no other heirs to him: agreeably to Mahomedan law, one-fourth devolves to the widow, and three-fourths to the mother of the deceased. Previously to completion of the execution of the decree in favor of Syud Mohommud Ali Khan, the auction sale of the rights and interests of Noorjehan Begum took place, and was purchased by them, and, after obtaining the grant of purchase, objection was preferred by petition to carrying into effect the execution of the decree in favor of Syud Mohommud Ali Khan, and the plaintiff put in a petition claiming the property as belonging to her under the marriage dower; it was rejected under the circumstances: the auction of the property had

previously taken place, and by the receipt of the futwa from the mooftee her claim was inadmissible, and the plaintiff was directed to sue Government and the purchasers, which was confirmed by the Sudder Dewanny Adawlut. This portion of the village has been excluded from the execution. These circumstances have not been taken into consideration by the second principal sudder ameen. In the former part of the case, the plaintiff merely stated being in possession of an ikrarnamah and deed of possession, and in the present instance has filed three documents; of the third there is no mention in any of the papers of the proceedings.

The respondent in answer alleged: Noorjehan Begum having gifted this portion of the village to Syud Mohummud Ali Khan, who having sued and obtained a decree for the same, and having during his existence granted it to her in lieu of her marriage dower, therefore after the demise of her husband it is not dividual with his other heirs. The decision of the second principal sudder ameen is just. The other portion of the answer is lengthy, and recapitulation of former representations.

COURT.

The points to be ascertained in this case are; first, on the part of the appellants: whether the purchase made by them at the auction on the 22nd of March 1833, of the property of Noorjehan Begum and Zeenutunnissa Begum, was *bonâ fide* the whole 12 annas share of the village Singecah Bozurg, or what portion thereof? On the part of the respondent: whether she had been legally put in possession of the 3 annas portion within the 12 annas of the village, in lieu of her marriage dower.

It appears Noorjehan Begum and Zeenutunnissa Begum were sisters, each held 6 annas share respectively of the village; their property in satisfaction of a decree of court was advertised for sale, the auction thereof took place on the 22nd of March 1833, and was purchased by the appellants, that is, the husband in the name of his wife. The 6 annas of Zeenutunnissa Begum not being involved in the litigation of this suit, any further remark regarding it becomes unnecessary. Noorjehan Begum (whether in a fit of generosity or fraudulent intent, is unnecessary to enquire) gifted to her son, Syud Mohummud Ali Khan, under deed, dated 8th of Cheite 1222 Fuslee, 3 annas portion of her 6 annas share, together with portions of property in several other villages. Syud Mohummud Ali Khan sued his mother for possession of the several portions of the gifted property, and obtained a decree for the same, under date 18th November 1829, in the provincial court of Patna, which was appealed from, to the Sudder Dewanny Adawlut, which Court, it is alleged by the plaintiff, confirmed the decree of the Patna provincial court, (but the decision of the Sudder Dewanny has not been filed.) After the appeal, which was undoubtedly preferred, the provincial court directed security to be taken from the appellant Noorjehan Begum:

in the event of not obtaining it from her, to call on the decreeholder to furnish security in order to put him in possession. Noorjehan Begum declined to furnish security, whereon the decreeholder was called on to do so not until the plaintiff in this case; leased the 3 annas portion under litigation to Musst. Zumeerun, the wife of Birjeeharee Lall, then Birjeeharee Lall came forward to be security for Syud Mohdummud Ali Khan, to whom legal possession does not appear to have been declared to the provincial court of Patna, from the obstinacy of Syud Mohummud Ali Khan, who declined to grant a receipt of being in possession until he had obtained certain written conditions from Noorjehan Begum. The nazir of the court, under date 14th March 1833, reported that Syud Mohummud Ali Khan, on his route to Mozufferpore to deliver into court in person, the customary receipt of being in possession, died on the 1st of March 1833. This shows Syud Mohummud Ali was never legally in possession of the property decreed to him by the provincial court of Patna, consequently his wife Beichna Begum could not have had possession legally. From document No. 60, proceedings held under date 30th of May 1834, by the additional judge, Mr. Templer, it appears possession of this 3 annas portion was refused to be given to the plaintiff, respondent, on the grounds—the sale by auction thereof had taken place, the sale confirmed, and the deed for possession had been delivered; if aggrieved, to sue the Government and the auction purchaser: from this order no appeal was preferred. And it is stated in the plaint of this case, that the auction purchaser had obtained a decree for this 3 annas portion, but from a certain sentence in the decree in favor of the plaintiff, the auction purchaser appealed therefrom, which decree was with amendment confirmed: from these decisions, no appeal or special appeal appears to have been preferred. Moreover, the three documents filed in proof of the marriage settlement and possession are:

First. Ikrarnamah, or agreement, previous to marriage, dated 15th of Ramjan 1242 Hijree, agreeing with 1st of Bysack 1234 Fuslee. The impress of the seal thereon has this inscription, Meer Mohummud Ali Yaft.

Second. Deed for possession of all the property decreed in lieu of marriage dower, dated 7th of Badoon 1239 Fuslee. The impress of the seal thereon has the inscription Syud Mohummud Ali Khan.

Third. Ikrarnamah, or agreement, of having given to his wife in mortgage on account of her marriage dower certain portions of his property (detailed on the document) retaining certain portions for himself, which on his demise are to devolve to his wife as the marriage dower, dated 17th February 1829, 12th Sawun 1244 Hijree, 19th of Maugh 1236 Fuslee. The impress of the seal thereon has the inscription, Syud Mohummud Ali Khan.

All three inscriptions are different; in the 1st, he is a Meer, without the title of Khan, in the other two the Meer is dropped, and the

title of Khan taken: in the 2nd Ali Khan are separate; in the 3rd Ali Khan are run into one. These differences throw a suspicion on the genuineness of these documents. In part, the validity of the 2nd document, viz., deed for possession of all the property, was strongly suspected by the additional judge, Mr. George Gough, in his proceeding, dated 17th September 1836, filed as No. 61, in this suit, the production of the 3rd document corroborates Mr. Gough's suspicions, and shows clearly it is a fabrication; and in this proceeding held by Mr. Gough it appears the mooftee's futwa declares the document to be an agreement previous to marriage, and from its stipulation it is not a kabeennamah (or deed of marriage portion,) but is an agreement for the payment of a monthly stipend of 25 rupees for expenses. It is specified that the marriage portion is computed to be rupees 40,001, but does not condition that possession of property is to be given in lieu of the marriage portion.

From the above explanation of facts, it appears the additional judge, Mr. Templer, refused letting the respondent in possession of the 3 annas portion on village Singeeah Bozurg, against which no appeal was preferred. That for this said 3 annas portion Musst. Zumeerun sued, and obtained a decree on the 10th of June 1844, who appealed from it, on account of an irregular clause therein, and that on the 12th of August 1844, the appeal judge, after striking out the irregular clause in the way of amendment, confirmed the decree. No appeal or special appeal having been preferred from those decrees, they are permanently established. The document alleged to be a kabeennamah has been declared by a futwa of the mooftee to be an agreement for the payment of a monthly stipend of 25 rupees for expenses. The second document in proof of being in possession of the property under the marriage portion is clearly a fabrication. From the production of the third document, which is of a prior date to the second document, both being contrary to each other must be deemed inadmissible as evidence. In lieu of the respondent being in possession of the 3 annas portion, it appears she was never legally let in possession, and that property was actually decreed to her opponent: under that very circumstance the decision of the second principal sudder ameen cannot be upheld, the plaintiff not having established her claim.

At all sales in execution of decrees of the courts nothing more is disposed of than the property that was in the possession of the debtors at the time of sale. Against the appellant's allegation, that 12 annas share was purchased at the sale, there is no other contention than the claim preferred by the plaintiff (respondent) to the 3 annas portion by this suit. This 3 annas was, under date 10th of June 1844, decreed to the appellants on the grounds—it was in the possession of Noorjehan Begum, the debtor, at the time of sale. Hence, the appeal is decreed, and the decision of the second principal

sudder ameen reversed. Costs of both courts chargeable to the respondent.

THE 12TH MARCH 1850.

No. 50.

Original Suit.

Brijbeeharee Lall, Plaintiff,

versus

Runglall Chowdhree, Buhorun Singh, Girdharee Singh, Moost. Zeenutulnissa Begum *alias* Beichna Begum, Meer Booneead Allee, Assa Ram, Bhoree Missir, and Soobboor Missir, Defendants.

THE amount of action was laid at Company's rupees 1,466-14-3, and the suit instituted for the possession of 7 annas share of village Shahpore Booshhur, pergunnah Suriesah, together with mesne profits, and reversal of the lease granted by Beichna Begum to Soobboor Missir.

The plaint sets forth : that Meerza Abdoollah Beigh, the principal sudder ameen, on the 21st of September 1833, passed a decree in favor of the plaintiff for the sum of rupees 1,434-8-9, payable by Noorjehan Begum. On carrying out the execution of that decree Noorjehan Begum died, whereon Musst. Zeenutulnissa Begum *alias* Beichna Begum, made an application to the settlement officer, as heir of Noorjehan Begum, that the settlement of her share in the village might be effected with her. At that time an inventory of this property had been filed in progress of the execution of the abovementioned decree; against which Musst. Beichna Begum petitioned, urging the property appertained to her, under a deed of bye-mukasah from her late husband, Syud Mohummud Ali Khan. On the 26rd of July 1842, Syud Ushruff Hosein, the second principal sudder ameen, rejected it, and directed the sale of the property; which took place on the 10th of June 1844, and was purchased by the plaintiff. As Noorjehan Begum, the debtor, held 7 annas portion within the 8 annas share, which 7 annas was sold at auction and purchased by him, the possession of which the defendants having opposed, he therefore sues them.

The answer of defendant Musst. Beichna Begum alleged : that Noorjehan Begum held 8 annas share in the village, 4 annas of which she gifted to her son, Syud Mohummud Ali Khan, who transferred it to her in lieu of her marriage dower, hence Noorjehan Begum had no right thereto; but Booneead Allee, her own man of business, without her permission, wrote out a deed of partnership in his own name, as executed by herself, is false; and he leased 4 annas share to Bhychurrun Lall, and 4 annas to Seeboo Missir: of this fraud intimation was given to the court. The plaintiff's statement that she was heir to Noorjehan Begum is erroneous; and

the mesne profit of the share does not produce so much as stated by the plaintiff.

Soobboor Missir, in his answer, alleged: the provincial court of Patna, on 18th November 1829, decreed 4 annas out of the 8 annas share to Syud Mohummud Ali Khan, who gave it to his wife Musst. Beichna Begum as a marriage dower, who of the 4 annas gifted the $1\frac{1}{2}$ annas for a consideration to Meer Booneead Allee, afterwards both leased their shares to him from 1247 to 1262 Fuslee, conformably thereto he was in possession. After the demise of Noorjehan Begum, the settlement of the 8 annas share was effected with Musst. Beichna Begum and Meer Booneead Allee, who sold $1\frac{1}{2}$ anna to Runglall Chowdree: agreeably thereto the rent of the lease is paid to them.

Buhorun Singh answered: that the whole 16 annas was decreed to Noorjehan Begum and Zeenutulnissa Begum, that is, 8 annas to each. The 8 annas share of Zeenutulnissa Begum was sold under decree of court. Runglall purchased 6 annas and himself 2 annas, within his 2 annas he sold 1 anna to his own brother Sheebo Singh. The plaintiff has no claim to this 8 annas share, and has unjustly sued him.

Buhoree Missir, in answer, alleged: he had purchased 2 annas share from the plaintiff; why he has sued him there is no ascertaining.

Musst. Ramdeehoo Koonwur, the widow of Girdharee Singh, alleged: Beichna Begum sold $1\frac{1}{2}$ annas to Booneead Allee, who sold half anna to her husband, agreeably to which she has been in possession, and the mutation of her name has been effected in the collectorate: the suit against her is unjust.

The defendant Assa Ram alleged: Musst. Beichna Begum and Booneead Allee sold to him 1 anna portion under bill of sale, dated 24th of April 1840, for rupees 500, and Booneead Allee alone sold to him half an anna under bill of sale, dated 11th January 1841, agreeably to which he has been in possession and in the settlement together with Musst. Beichna Begum: the suit of the plaintiff is unjust.

Defendant Runglall Chowdhree alleged that Booneead Allee sold to him, under date 24th Assin 1249 Fuslee $1\frac{1}{2}$ anna portion. The assertion of Assa Ram and the widow of Girdharee Singh that they made purchases are false.

Amee Missir and Beechook Missir and Jharoolah Missir filed a third party petition, urging that in the 8 annas share sold at auction belonging to Musst. Zeenutulnissa Begum, Runglall purchased 6 annas, and 2 annas Buhorun Singh within the 6 annas: they are purchasers of 4 annas and 6 pie, of which they are in possession.

Booneead Allee, defendant, having died, his heirs were directed by the proclamation to attend to prove their relationship and to carry on the suit: not having attended, the plaintiff proved by evidence of

witnesses the demise of Booneead Allee and that Musst. Fukeerun, his widow, was his heir, for whom a proclamation was issued to carry on suit, but who has filed no answer.

COURT.

This case, owing to the supposition of being similar to case No. 389, just decided, was transferred to this court to investigate and decide both at the same time; but previous to the transfer the whole of the proofs had been called for and filed.

The plaintiff claims 7 annas portion within the 8 annas share of the village Shahpore Boeshhur, as purchased by him at an auction sale in satisfaction of a decree of court, the property of Noorjehan Begum, the debtor. The principal opponent, Beichna Begum, after a confused mixture of representations, alleges that settlement of the whole 8 annas share was made with her under the marriage dower.

From proceeding of the settlement of the village, dated 29th May 1840, it would seem there had been a previous settlement of the village, in which the settlement of the whole 8 annas share had been effected with Noorjehan Begum: that settlement, under circumstance of incomplete adjustment of the malikanah, was returned by the Board of Revenue for revisal. Meanwhile, Noorjehan Begum died on the 2nd Jilkeed 1247 Fuslee, (corresponding with 8th of January 1840.) Musst Beichna Begum preferred a petition to the settlement officer, claiming the settlement of the 8 annas share might be made with her, 4 annas share as her marriage dower and the other 4 annas as heir to Noorjehan Begum. The settlement of the 8 annas share was accordingly effected with her, including therein Booneead Allee as 1 anna 9 pie sharer, purchased from Beichna Begum, and Assar Ram as 1 anna sharer, purchased from Beichna Begum and Booneead Allee. This settlement of Beichna Begum with Government for the payment of revenue for the 8 annas share of the village, may show she was in possession of the property at the time the auction sale took place; yet it was fraudulently obtained under misrepresentation as far as it regards her right to 4 annas share as her marriage dower; and is shown, by the decision in case No. 389 and documents filed in this case, that the alleged document of marriage dower was declared by the futwa of the mooftee from the stipulation of the deed not to be a kabeennamah, and by the same futwa she was entitled to $\frac{1}{4}$ th of the property of her demised husband, Syud Mohummud Ali Khan, and $\frac{3}{4}$ ths of the property devolves to his mother Noorjehan Begum. By the proceeding of the settlement of the village that a settlement of the 8 annas share had been effected with Noorjehan Begum; while in possession thereof the inventory of the property for sale in satisfaction of a decree of court was filed on the 22nd February 1839, eleven months prior to the demise of Noorjehan Begum, and 15 months prior to the settlement of the 8 annas share being made with Beichna Begum, which settlement cannot bar the sale of Noorjehan

Begum's property, on account of her debts. It is hereby seen that Noorjehan Begum held in her own right 4 annas share and $\frac{1}{4}$ ths of the other 4 annas devolved to her on the demise of her son, Syud Mohummud Ali Khan, consequently seisin with 7 annas portion of the 8 annas share which was put up for sale, and purchased by the plaintiff, to which he appears legally entitled. Therefore, ordered, that 7 annas portion of the 8 annas share be decreed to the plaintiff. He has very improperly sued Buhoree Missir, to whom he has acknowledged having sold 2 annas portion within his auction purchase, and has also improperly sued the sharers of the other 8 annas share of the village: the costs of these several persons the plaintiff is chargeable with. Assa Ram appears to have purchased 1 anna portion, for the possession of which he sued and obtained a decree, from which Musst. Beichna Begum appealed but afterwards withdrew it: he is accordingly established therein, and must be considered as the purchaser of the one anna to which Beichna Begum was entitled as her portion of $\frac{1}{4}$ th of her husband's property; the costs of this person are also chargeable to the plaintiff, for, having excluded one anna from the 8 annas, he should not have sued this person. The lease held by Soobboor Missir is hereby cancelled as irregularly granted, and mesne profits from the several persons according to the portions they may severally have held possession. With regard to other purchases of portion of the property must be considered as unjustifiable sales, and the purchasers liable to the payment of mesne profits agreeably to their several quotas. With the exception of the defendants, whose costs have been made chargeable to the plaintiff, the other defendants are chargeable with their respective costs, together with the plaintiff's costs proportionately to the portion they respectively held in the property.

THE 13TH MARCH 1850.

No. 398.

Regular Appeal from a decision passed by Moulvee Syud Mohummud Mohamid Khan, Sudder Ameen of Moozufferpore, dated 26th of May 1847.

Omrah Raee, (Defendant,) Appellant,

versus

Seeb Churrun Singh, (Plaintiff,) Respondent.

THIS suit was instituted to recover the sum of Company's rupees 642, being the principal and interest of a loan of Sicca rupees 500, on bond dated 16th of Bysack 1250 Fuslee, to be discharged at the end of the month of Maugh 1251, of which loan the sum of rupees 50 was paid on the 15th of Kartick 1252 Fuslee.

The defendant denied the plaint *in toto*, and alleged he had fallen ill in the month of Choite, and had proceeded to the village of Asmanpore for medical aid, and did not return until the end of

Jyte 1250 Fuslee, therefore could not possibly have signed the bond. That he was unacquainted with the plaintiff, and did not pay the 50 rupees for which credit has been given.

The sudder ameen decreed in favor of the plaintiff, on the grounds: the evidence of the subscribing witnesses to the bond proved the delivery of the loan, and the receipt thereof, and the execution of the bond by the defendant; although the defendant's witnesses deposed in his favor, their evidence is not to be depended upon.

The defendant appealed from this decision, urging: that there is a discrepancy in the evidence of the plaintiff's witnesses; and that his witnesses had proved his allegation of *alibi*, &c.

The respondent answered: there was no discrepancy in the evidence of his witnesses, the *alibi* set up by the appellant is false.

COURT.

Owing to the clashing evidence of the two parties, it was deemed requisite that the witnesses should attend to be interrogated by this court. Both parties were directed to adduce those witnesses who had given their evidence in the court of the sudder ameen. The appellant adduced his three witnesses: from two of them it could only be gleaned—the appellant had, on account of illness, proceeded to the house of a relative, residing in the village Asmanpore, for medical aid, and did not return home within the period mentioned by the appellant in his answer to the plaint. It would have been more to the point, and satisfactory to the court, if the appellant (defendant) had adduced inhabitants of the house within which he lay ill, or the neighbouring residents thereto, to depose he had not quitted the village during the period alleged. It is true, the witness Dotal Rae deposed to that fact, as he attended on him every day, and gave him medicine morning and evening, during the alleged period. The respondent (plaintiff) adduced two witnesses only, and stated the others were not forthcoming. The witness Koodhye Lall, the transcriber of the bond, deposed: both parties and the witnesses were collected together when he went to the house of the plaintiff, that all the witnesses were privy to the circumstance of his having drawn out a rough copy of the bond from the dictation of Omrah Rae, and having afterwards transcribed a fair copy thereof on a stamp given by Omrah Rae, whose age he stated to be about 56 or 60 years, that Omrah Rae himself examined, counted, and tied up the money in a handkerchief and gave it into the hands of one of the two persons who were with him, whom he did not know, nor their names. This witness had during the interrogation pointed out, among the crowd in the court, Meerchund Rae, the son of Omrah Rae, whose age, to this court, had every indication of being about 50 years, hence his father, Omrah Rae, must be much older than 56 or 60 as stated by the witness. The other subscribing witness to the bond, Rughbeer Jha, corroborated the evidence

given by the transcriber of the bond, with the exception that the money tied in a handkerchief was given by Omrah Raee to his son, Meerchund Raee, who placing it under his arm went away. Now this is a clear discrepancy from the evidence of Koodhye Lall, who had identified the person of Meerchund Raee in this court, and yet deposed he knew not the person nor his name to whom the rupees in a handkerchief had been given. There is another discrepancy from the evidence of the transcriber of the bond. Witness Gunnush Duth, a subscribing witness to the bond, who was not adduced in this court, deposed in the court of the sudder ameen, that he cursorily went to the plaintiff's house during the transaction, and was going out again, when Omrah Raee asked him to be a witness; that he was not present when the rough copy of the bond was taken. This differs from Koodhye Lall's evidence that all the subscribing witnesses were present and privy to the whole transaction. Under these discrepancies the decision of the sudder ameen cannot be upheld. Therefore, ordered, the decision be reversed, and the appeal decreed. The costs of both courts chargeable to the respondent.

THE 20TH MARCH 1850.

No. 263.

*Regular Appeal from a decision passed by Kazeer Mohummud Allum,
Moonsiff of Coelee, dated 10th March 1849.*

Musst. Rhumut, (Defendant,) Appellant,
versus

Meer Moorad Ali, (Plaintiff,) Respondent.

THE amount of action is laid at Company's rupees 13-8, being three times the amount of the annual revenue of the property under dispute, and the suit is instituted for the mutation of the plaintiff's name in the records of the collectorate, of 3 pie portion within 6 annas share of the whole 16 annas of the village Bazeedpore Goondhore, pergunnah Treesut.

The plaint sets forth: that Kadurbuksh, on his own part and that of his wife, Musst. Rhumut, sold to the plaintiff 3 pie portion under an absolute bill of sale, dated 2nd Shair Mohorum 1258 Hijree, for the sum of 800 rupees. Shaik Ainullah took this portion and 1 pie more, a subsequent purchase, that is, one anna portion under a deed of lease from him from 1252 to 1260 Fuslee; but the vendor not causing the mutation of his name in the collectorate, he sued for the same, which was struck off the file under Act XXIX., 1841; he therefore now sues anew for the mutation of this 3 pie portion in his name in the collectorate, and a distinct suit has been instituted for the one pie.

Mysstn. Heisamut and Beichun answered: That within the 6 annas share 2 annas and 2 pie was the property of Shaik Fuzul Huk, who was their father, and that of Shaik Kadurbuksh. Their

father died leaving Shaik Kadurbuksh, his son, and ourselves, his daughters, as heirs to his patrimony. Shaik Kadurbuksh having stated that their father had sold, during his existence, 2 annas portion to his wife, Musst. Rhumut, they sued for their portion of their father's property, and obtained a decree for 1 anna 1 pie; from which decision an appeal has been preferred and is still pending. With the remaining 1 anna 1 pie Shaik Kadurbuksh may dispose of as he please.

Goolam Peér answered he had been unjustly included as defendant, for he had no concern in this suit.

The defendant Shaik Ainullah alleged: he had purchased from Shaik Kadurbuksh $\frac{1}{2}$ an anna portion prior to the plaintiff's purchase, and that he had purchased 1 pie portion from Musst. Rhumut, making 3 pie portion his own property, and remaining portion appertaining to Musst. Rhumut is leased to him, from 1247 Fuslee, for twenty-one years on an advance of rupees 75.

The defendants Musst. Rhumut and Kadurbuksh allowed the case to go by default as far as they were concerned in the case.

The moonsiff decreed the 3 pie in favor of the plaintiff, on the ground: that in case No. 167 of that court the bill of sale of Musst. Rhumut was made null and void. That within 2 annas 2 pie, the property of Shaik Fuzul Huk, 1 anna 1 pie had been decreed to Musstn. Heisamut and Beichun, his daughters, and the remaining 1 anna 1 pie to his son Shaik Kadurbuksh, of which $\frac{1}{2}$ an anna had been previously sold by him to Shaik Ainullah, the remaining 3 pie is decreed to the plaintiff,—the subscribing witnesses to the bill of sale having proved the payment and receipt of the money and the execution of bill of sale.

From this decision Musst. Rhumut appealed, urging: that she had been unable to file an answer to the original plaint, arising from sundry events that happened. Although the plaintiff has sued at three times the amount of the annual revenue, yet he has undervalued the amount of action: in lieu of being rupees 13-8, it should be 17 rupees, 4 annas, 4 pie. Her husband's father, Shaik Fuzul Huk, sold to her 2 annas portion, from which she had disposed of the 3 pie to the plaintiff, and denies the power of her husband Kadurbuksh to dispose of $\frac{1}{2}$ anna, &c.

COURT.

From perusal of the papers of this case, there does not appear any cause to interfere with the decision of the moonsiff, which must be upheld. The appellant having allowed the case to go by default, by not filing an answer to the plaint, her appeal cannot be taken into consideration, particularly as the case appears to have been nearly two years pending. Therefore, ordered, the decision of the moonsiff be affirmed, and the appeal dismissed, with costs of both courts.

THE 20TH MARCH 1850.

No. 264.

*Regular Appeal from a decision passed by Kazeer Mohummad Allum,
Moonsiff of Coele, dated 10th of March 1848.*

Musst. Rhumut, (Defendant,) Appellant,

versus

Musst. Beichna and Beebee Hussnee, (Plaintiffs,) Respondents.

THE action was laid at Company's rupees 22-0-3, being three times the amount of the annual revenue of the property under dispute; and the suit instituted for the possession and mutation of the names of the plaintiffs in the records of the collectorate, of 1 anna 1 pie, within 2 annas 2 pie, and that within 6 annas share of the whole 16 annas of the village Bazeedpore Koodole, pergunnah Treesut.

The plaint sets forth that Fuzul Huk, the father of the plaintiffs, was proprietor of 2 annas 2 pie, within 6 annas share of the above-mentioned village. He died in 1246 Fuslee, leaving one son, Kadurbuksh, and the two plaintiffs, his daughters. Agreeably to Mahomedan law, half of the property goes to the son, and the other half to us, his daughters; but their brother Kadurbuksh having declined to give possession of their share, therefore a suit was instituted; and on the 16th of April 1846, a decree was obtained in the moonsiff's court. On appeal before the principal sudder ameen, it was struck off the file, the replication in that suit not having been filed within the prescribed limit of six weeks: we therefore sue anew.

Defendant Ainullah alleges: Shaik Fuzul Huk, the father of the plaintiffs, sold 2 annas of his property to Musst. Rhumut, the wife of Kadurbuksh; Musst. Rhumut at first gave the 2 annas in lease to him, and afterwards sold to him 1 anna 1 pie, under conditional bill of sale; after the expiry of the term, the customary application was made to the court under Regulation XVII., 1806. Afterwards Shaik Kadurbuksh sold to him half an anna; having sued for possession thereof, obtained a decree in the court of sudder ameen, dated 6th May 1843. Now within 2½ annas of the property, 2 annas and 1 pie is his property under the decree and conditional bill of sale. The suit of the plaintiff is unjust.

Defendant Kadurbuksh alleged: Shaik Fuzul Huk, his father, sold to his wife 2 annas, and half an anna he sold to Ainullah: there being nothing left, why should the plaintiffs sue? Musst. Rhumut, of her purchase, sold 1 anna to Moorad Ali. Of the 2 beegahs stated by the plaintiffs as being in their cultivation, those 2 beegahs were given by his father on seeing the faces of his grandsons, hence their possession thereof.

Musst. Rhumut answered: Shaik Fuzul Huk sold 2 annas of his property to her, of which she sold 1 anna to Moorad Ali: the remainder is in her possession.

Doondah Sahoo, defendant, answered: that Kadurbuksh and Musst. Rhumut had farmed sundry parcels of land at different times to him, which are still in his possession.

The remaining twelve persons, defendants, failed to file any answer to plaint.

The moonsiff decreed in favor of plaintiffs, in virtue of a decision passed by the moonsiff on the 16th of April 1846, in which it is stated the 2 annas share, said to have been sold by Shaik Fuzul Huk to Musst. Rhumut, was not admitted, conformable to which he decrees for the plaintiffs the portion claimed by them.

The defendant Musst. Rhumut appealed from the above decision, urging: the decision taken in proof by the moonsiff for the decision of this case is not correct, for on appeal that decision was reversed, therefore cannot be taken in proof for this case. Two annas share was sold to her by Shaik Fuzul Huk, was clearly proved by evidence of her witnesses, &c.

COURT.

Although the decision was reversed by striking the case off the file arising from the replication not having been filed within the prescribed period of six weeks, yet it was not on the erroneousness of the decision. It appears from the reasons assigned in that decision, that the moonsiff was warranted in passing the present decision which is accordingly affirmed, and the appeal dismissed, with costs of both courts chargeable to the appellant.

THE 21ST MARCH 1850.

No. 266.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teghra and Beegoo Surai, dated 13th March 1848.

Mohun Lall, guardian of Eshree Pershad, minor son of Doorbeejoy Singh, deceased, (Plaintiff,) Appellant,

versus

Toral Mull and Jummun Lall, (Defendants,) Respondents.

THIS suit was to recover the sum of Company's rupees 32, arrears of rent on cultivation effected by the defendants in village Sanah.

This suit is in every respect similar to case No. 267, and this court

THE 21ST MARCH 1850.

No. 267.

Regular Appeal from a decision passed by Pundit Data Ram, Moonsiff of Teghra and Beegoo Surai, dated 13th March 1848.

Mohun Lall, guardian of Eshree Purshad, minor son of Doorbeejoy Singh, deceased, (Plaintiff,) Appellant,

versus

Meer Waris Ali and Meer Banda Ali, (Defendants,) Respondents.

THIS suit was for the recovery of Company's rupees 81-15-10½, arrears of rents in cash, kind, and syar, that is, fruits, differing more or less in the quantity of cultivation annually from 1240 to 1254 Fuslee, situate in village Sannah, pergunnah Bhaleeah.

The plaint sets forth: the talooka Sanah includes twenty villages, principals and dependencies; that plaintiff is 1 anna 15 gundahs sharer in the village Sanah, and holds a lease of 1 anna 1½ gundahs more therein; and the defendants are cultivators in the said village; having ceased to pay their rent from the end of 1246 Fuslee, therefore sue them for arrears of rent from 1247 to 1254 Fuslee.

The defendants allege they do not cultivate any land but those of chuk Ewas, &c. within their own property, and that the suit is instituted to obtain possession thereof.

Meer Himmud Ali and three others filed a third party petition, urging they are in possession of 8 beegahs in chuk Ewas by purchase, and a share in the village Sanah: neither the plaintiff nor the defendants having mentioned that circumstance, therefore they file a third party petition for the protection of their property.

Syud Zarooroo, Huk and Musst. Fazeelutunnissa filed a third party petition, alleging: they were sharers in the village Sanah, the plaintiff not having mentioned that circumstance in the plaint, hence the cause of their petition.

Musst. Ekekeenunnissa, the widow of Mohummud Hussun, filed a third party petition, alleging her husband held a share in chuk Ewas and own cultivation which the defendants cultivate, the plaintiff has no concern therein.

Meer Imaumbuksh filed a third party petition, urging: he was a sharer in chuk Ewas which the defendants cultivate, and the plaintiff has no concern therein.

Meer Esuf Ali and three others filed a third party petition similar to the above.

The moonsiff dismissed the case, on the grounds: from the evidence of the witnesses and report of the ameen who was deputed to the spot, it appears the cultivation of the defendants is in chuk Ewas, &c., in which chuk the plaintiff has no right; the rent of the ryots thereof is paid to Shufdur Ali, lessee, and Torul Mull, putwarree: the real object of the plaintiff's suit is for right in the land.

The plaintiff from the above decision appealed, urging: that his putwarree and witnesses proved the defendants cultivated the lands of his village, and the defendants did not adduce evidence to prove that chuk Ewas, &c. were distinct from the village Sanah. The ameen from similarity of disposition with the defendants has colluded with them, and delivered in a false report.

COURT.

From the ikrarnamah filed by the defendants, and acknowledged by the plaintiff, it appears the plaintiff has no claim to the land of chuk Ewas, &c., in which the defendants held their cultivation. The documents filed by the plaintiff having no allusion to chuk Ewas, &c. the plaintiff's putwarree deposed the defendants had paid rent for 10 years prior to the present balance from 1236 to 1246; which should have been specified in the plaint; not being specified therein, or in the replication, the putwarree's evidence must be considered as an attempt to prove what was not alleged in the plaint, therefore not to be depended upon; consequently there is no reason to interfere with the decision of the moonsiff, which is hereby affirmed, and the appeal dismissed, with costs of both courts chargeable to the appellant.

THE 25TH MARCH 1850.

No. 270.

Regular Appeal from a decision passed by Syud Munneerooddeen Hoossein, Moonsiff of Mhowah, dated 15th March 1848.

• Sheehoo Churrun Loll, (Defendant,) Appellant,

versus

Musst. Jootan Koonwur, (Plaintiff,) Respondent.

THE amount of action is laid at Company's rupees 50, being three times the amount of the annual revenue of the land under dispute. The suit is for the reversal of the decisions passed under Act IV, 1840, dated 19th of December 1846, by the sudder ameen, and that of the sessions court confirming that decision, dated 20th of August 1847; and for possession of 2 beegahs 10 biswas of land, denominated Tollah Ram Bagh, or garden, situate in village Gopaulpore Gopeenauth, pergunnah Beesarah.

The plaint sets forth: the village Bagh Tollah Ram was the property of Tollah Ram, the ancestor of the plaintiff, previously to 1137 Fuslee; the village Gopaulpore Gopeenauth, the property of Dan Doss, the ancestor of Deibnarain Singh and others. In 1137 Fuslee, agreeably to measurement, exchange of villages was effected between them. These 2 beegahs 10 biswas of land which had been planted as a garden by Tollah Ram, continued successively in possession of his descendants. In 1215 Fuslee, Beedeahnund, the father of the plaintiff's husband, purchased 2 annas share of the vil-

lage Bagh Hurnarain, whereon there was a dispute between the proprietors, who appointed arbitrators in 1225 Fuslee to partition the land; and in the partition formed by the arbitrators these 2 beegahs 10 biswas were allotted to Beedecahnund, the father of the plaintiff's husband, and has continued in succession to the plaintiff. The defendant, a recent purchaser within the village Bagee Hurnarain, opposing the plaintiff's possession, induced her to lodge a complaint in the foudarry; and by the thannadar's report it was proved to appertain to her village and in her possession; notwithstanding the sudder ameen put the adverse party in possession, and, that order being confirmed by the session court, she was thereby dispossessed, and hence this suit.

The defendant alleged the land under dispute never appertained to the plaintiff's village: it appertains to his village Bagee Hurnarain: in proof of which, it is exhibited in the plan of the butwarra ameen, which partition was directed and formed by the order of the collector, is sufficient. The partition formed by the arbitrators is not complete, the proprietors have not signed that paper; and the plaintiff, at the time of his partition, presented a petition to the collector, which was rejected. The suit of the plaintiff is unjust.

Ram Reichia Lall and Kishnanund filed a thirty party petition, and alleged: they were own brothers to the defendant, and were residing in family compact with him, yet the plaintiff has not included them as defendants in the suit.

Deebnath Koonwur and Bhyronauth each filed distinctly third party petitions in corroboration of the plaintiff's plaint.

Goorcepurshad Singh and two others filed a third party petition in corroboration of the defendant's allegations.

The moonsiff decreed in favor of the plaintiff, on the grounds: from the evidence of the plaintiff's witnesses, the paper of partition of the arbitrators, and other documents filed by the plaintiff, it is proved the land under dispute appertains to the village of the plaintiff, and it had long been in her possession. With the exception of the defendant, no other of the proprietors oppose the plaintiff's possession. The defendant's plea of the butwarra formed by the order of the collector is of no utility, the butwarra having been cancelled, which is proved by the copy of the proceeding of the collector, dated 5th March 1847, filed by the plaintiff; which states, from the receipt of a letter, dated 27th January 1847, from the revenue commissioner, conveying orders from the Sudder Board of Revenue, dated 11th of January 1847, to cancel the butwarra, &c.

The defendant, being dissatisfied with this decision, appealed, urging: the whole of the land under dispute is not in his possession, he is 6 annas sharer, the plaintiff 2 annas, and others 8 annas sharers. The plaintiff's suing him alone, and not the other sharers, is unjust. The partition of the arbitrators taken by the moonsiff as proof of the plaintiff's claim, is incomplete, not having the proprietors' names sub-

scribed thereon, and no ikrarnamah to the arbitrators has been filed in this case. The evidence of the arbitrators has not been taken by the moonsiff, and of the sharers, who filed a third party petition, no notice has been taken, therefore the investigation of the moonsiff is not complete.

COURT.

Although the defendant may not have established his allegations, other documents and proofs on the part of the plaintiff beside the paper of partition of the arbitrators, may have in a very considerable degree led the moonsiff to pass a decree in favor of the plaintiff, yet having taken the partition paper of the arbitrators, seemingly as the principal proof on the part of the plaintiff, it was necessary to have established the authenticity thereof, by calling on the arbitrators to file the original applications to them, requiring their arbitration and partition of the property, also to file the ikrarnamahs of the proprietors to abide by their award, and to ascertain what proofs were adduced by which they, the arbitrators, were guided in forming the partition of the several parcels to whom they are respectively allotted, and also why the proprietors did not, as is customary, sign the allotment paper. These points not having been ascertained the investigation is incomplete. Therefore, ordered, the decision be reversed, the case be returned for re-investigation on the points above indicated, and to pass a decision according to the merits of the case.

The amount of stamp of the appeal plaint be returned to the appellant.

THE 25TH MARCH 1850.

No. 271.

*Regular Appeal from a decision passed by Syud Azeem Ali Khan,
Moonsiff of Dulsing Serai, dated the 13th March 1848.*

Hoolas Thawaree, Defendant, (Appellant),

versus

Munt Kurpaul Bhurtee, Plaintiff, (Respondent.)

THE suit was instituted to recover the sum of Company's rupees 22-8, being the principal and interest of an instalment bond, dated 25th Bhadoon 1252 F. S., to be discharged in two payments, first, 8 rupees at the end of Bhadoon 1253 F. S., and the second payment of 9 rupees at the end of Bhadoon 1254 F. S. The bond was granted in lieu of payment of rent due from defendant, for which rent, 17 rupees, a summary suit had been instituted, and when the defendant was apprehended to answer to that case, he entered into the above-mentioned instalment bond.

The defendant denied the plaint *in toto*.

The moonsiff decreed in favor of plaintiff for the sum of Company's rupees 19-4-6, on the grounds of the evidence of subscribing witnesses to the deed having proved the execution of the bond; not allowing the interest of 9 rupees, as the plaintiff should have sued directly on the expiry of each of the instalments.

The defendant appealed from this decision, urging: there was no dependence on evidence of witnesses; the moonsiff should have called for the summary suit from the collectorate, which would have discovered the fallacy of the plaint.

The appellant not having constituted any attorney on his part, the appellant was called three times to attend the hearing of his appeal: not having answered to his name or entered the court to carry on the appeal, which appears to have been filed 18th of May 1848, from which date to this day, the 25th of March 1850, more than six weeks have elapsed, the appeal is therefore, under Section 1, Act XXIX., 1841, struck off the file.

THE 28TH MARCH 1850.

No. 272.

Regular Appeal from a decision passed by Kaze Mohummud Allum, Moonsiff of Coelee, dated 23rd of March 1848.

Ram Deen Singh and Gobind Sahee, (Defendants,) Appellants,

versus

Bishnauth Singh and Sheelhoonauth Singh, (Plaintiffs,) Respondents.

THE action was laid at Company's rupees 5-13-8, being three times the amount of annual revenue of the property under dispute. The suit claims the right of pre-emption of 4 gundahs, 1 cowree, 2 krants portion within the sixth share of the whole village Peertaubpore, pergunnah Bugrah.

The plaint sets forth that themselves, the vendor, and others, are joint sharers of the village. Bholanauth first sold to themselves 8 gundahs, 3 cowrees, and 2 krants portion on conditional bill of sale, for one year; at the expiry of the term he made the customary application to the court under Regulation XVII., 1806. On the 11th September 1847, Mode Lall informed them that the vendor had sold half the portion to Ramdeen Singh and Gobind Sahee for 97 rupees, and the amount of their own conditional bill of sale had been deposited in court. The instant they heard this occurrence, they performed the tullub mouseebut and eshhad, and despatched the amount of purchase to the purchasers and vendor, which tender they declined. The purchasers being strangers, they therefore sue.

The vendor, in answer, alleged: a larger sum was specified in the bill of sale (under the apprehension the right of pre-emption would be claimed) than the property was sold for, rupees 75 only; of which he had received only 31 rupees, the remainder is still due.

The purchasers answered : the tullub mouseebut and eshhad have not been effected. Ram Deen Singh, one of the purchasers, has been from home for a considerable time, so that the purchase money could not have been tendered to him. Surdah Singh, own nephew to the vendor, was a subscribing witness to the bill of sale, so that the purchase was not effected secretly. This suit was not instituted until after the period of 5 months and 18 days had elapsed from the date of the bill of sale, and 27 days after the registry of the bill of sale, therefore is not liable to be heard.

The moonsiff decreed for the plaintiffs, on the grounds : from the evidence of the plaintiffs' witnesses it is proved they, on the instant of hearing of the sale, performed the tullub mouseebut and eshhad, and despatched the amount purchase, and tendered it to the vendor and the purchasers; and instituted this suit within one month from the date of hearing of the sale. The evidence of the defendants' witnesses is of no avail, but the sale effected by Bholanauth of the share of Heerah Loll, minor, his minor brother, is not admissible. When Heerah Loll attains his full age, this decision is no bar to his claim thereof.

The purchasers from this decision appealed, urging : that the plaintiffs did not obtain information of the sale till 5 months and 18 days after the expiration of the sale, and 28 days after the registry of the bill, is false; they had instant information on the sale of the property; for the vendor, on obtaining the purchase money, tendered to the plaintiffs the price of their conditional bill of sale; on his refusal thereof, he deposited it into the court. The plaintiffs did not specify in their plaint where and who were present when the tullub mouseebut and eshhad were performed. The plaintiffs reside 6 coss from the court of Coclee, and the distance of 12 coss from Mozufferpore, yet, contrary to the customary usage, they instituted the suit in the zillah adawlut of the judge. There is a discrepancy in the evidence of the plaintiffs' witnesses, for Ram Deen Singh was at Mozufferpore, therefore from home, how could the money have been tendered to him there? The observation of the moonsiff in the decision that Heerah Loll minor's share could not be sold, is not just : agreeably to Hindoo law, guardians have power to dispose of a portion of the minor's share for his support.

COURT.

It is true, specification of persons' names were not made in the plaint, but it stated that instantly Mode Loll gave the information of the sale of the property, the tullub mouseebut and eshhad were performed, and the purchase money despatched to the vendor and the purchasers. To this, Mode Loll as well as other witnesses deposed, that the plaintiffs had knowledge of the sale prior to the above stated occurrence, has not been proved by the defendants, appellants. The evidence of the witnesses that Ram Deen, one o

the purchasers, was absent from home, so that the purchase money could not have been tendered to him, is not satisfactory. The tender of the purchase money to Gobind Sahee, one of the purchasers of the property, is a sufficient tender. With respect to the objectionable clause in the decision of the moonsiff, "that the sale by Bholanauth of the share of Heerah Loll, his minor brother, is not admissible, that when Heerah Loll attained his full age, this decision is no bar to his claim thereof," it has not been attempted to be proved that the sale of the share of Heerah Loll was effected for his support. It is true it would have been more consonant with law, and more satisfactory to the appeal court, had the share of Heerah Loll been excluded from the decree altogether. That the decree is no bar to any claim that may be preferred to his portion of the property by Heerah Loll when he has attained full age, is a nullity: it neither benefits nor injures either party. There being no cause for interference with the decision of the moonsiff, it is hereby affirmed, and the appeal dismissed, with costs of both courts chargeable to the appellants.

THE 28TH MARCH 1850.

No. 300.

Regular Appeal from a decision passed by Kazeer Mohummud Allum, Moonsiff of Coelee, dated 23rd March 1848.

Bishnauth Singh and Sheehoo Loll Singh, (Plaintiffs,) Appellants,
versus

Bholanauth, for self and guardian of Heerah Loll, his minor brother, vendor, and Ram Deen Singh and Gobind Sahee, purchasers, (Defendants,) Respondents.

THIS is an appeal on the part of the plaintiff, from the decision passed by the moonsiff in case No. 272, (this day disposed by this court,) which announced, that decision did not bar a suit of the minor Heerah Loll, when he came of age, for his share, as being unjust: for in the former sale made to themselves under a conditional bill of sale, it was therein specified the sale was effected to discharge a debt of their ancestor, to Oud Loll muhajun.

COURT.

The conditional bill of sale mentioned by the appellants, is not filed in this case, and is foreign thereto, and is inadmissible as proof of their present allegation. It is true, the clause in the decision may be deemed extra-judicial, yet it does not benefit nor injure either party: for the law yields to the minor under any circumstance whatever, when he comes of age, a legal option to sue for the recovery of any property belonging to him, disposed of by guardians or others, while he was in the state of minority; consequently this appeal is dismissed. Appellants chargeable with their own costs.

THE 28TH MARCH 1850.

Nos. 648 and 649.

Regular Appeal from Syed Mohummyd Mohamid Khan, Sudder Ameen of Moozufferpore, dated 21st September 1847.

More Taqoor, (Defendant,) Appellant,

versus

Meerza Mohummud Reiza Beig, son and heir of Musst. Shareef Ulnessa Begum, (Plaintiff,) Respondent.

THIS suit was instituted to recover the sum of Company's rupees 523, 1 anna, being the principal and interest of mesne profits on 8 annas share of village Hurssoohar, pergunnah Buchhore, from the 7 annas instalment of rent of 1247 F. to the end of the year 1248 Fuslee, agreeably to the rent mentioned in the lease of the aforesaid 8 annas portion of the village.

The plaint sets forth: that Musst. Shareef Ulnessa Begum, the mother of the plaintiff, sued Mr. John Gale, of the indigo factory at Kymah, and More Taqoor, the employec of the factory, for mesne profits, on the rent of the 8 annas lease from 1244 to 1248 Fuslee. The second principal sudder ameen dismissed the suit under the Circular letter dated 11th January 1839, the mesne profits not having included in the former suit. On appeal, that decision was reversed, and the case sent back for re-investigation, whether the plaintiff was or not entitled to the rent from date of institution of suit to the date of decision thereof: that suit was struck off the file under Act XXIX., 1841. Agreeably to the order passed by the additional judges now sue anew:

Mr. John Gale answered: the factory had been purchased by him at auction in 1250 Fuslee, exclusive of debts due from it: the deed of sale is forthcoming. This debt being prior to his purchase, he is not liable thereto. There are sundry sums under bonds due by the plaintiff to the factory, which are liable to be deducted from the rent of the lease.

More Taqoor answered: Sheetab Taqoor was his father, who being the employee of the factory, the deed of lease was written out in his name, he had no further concern in the lease, which the factory benefited by, and the factory is wholly responsible for the debt: no further answer is requisite from him, having had no concern in the matter.

The sudder ameen passed a decree in favor of the plaintiff, making both defendants liable on the grounds: from copy of an application preferred by Mr. John Gale in the case of execution of decree on Toolsee Munder, dated 29th of November 1842, filed by the plaintiff, from which it appears Mr. John Gale of the factory presented a petition in the sudder ameen's court, for the issue of execution of a decree against Toolsee Munder, a cultivator of the village, that the money was due to the former proprietor of the factory,

which is dated 29th of November 1842, in which the said gentleman stated the giving and taking money of the factory was placed in his charge, which clearly shows the defendant is responsible for the payments and receipts of the debts on account of the former proprietor of the factory. The suit against the defendants is just. More Taqoor cannot be exempted from this, not being exempted from the former case.

From this decision More Taqoor appealed, urging: the decision was unjust. Even in the former investigation it was not established that he had any concern in the suit: he should then have been exempted, and now prays for exemption from all liability.

Mr. John Gale also appealed from the decision of the sudder ameen, urging: the former proprietor of the factory took the lease from Gopaul Naræen, the former proprietor of the land, who in the former suit for 8 annas was sued together with himself, has been left out in this, but it is requisite he should be included herein. From the deed of purchase of the factory, he is exempt from the former debts of the factory. The sudder ameen was requested to peruse the deed of purchase, and did not attend thereto. Copy of a proceeding was filed to prove that he was exempted from the former debts of the factory: this also was not attended to.

COURT.

The deed of purchase of the factory was adduced in court: it being very lengthy and not being able to fix on Mr. John Gale's clause of objection, that the factory was purchased without the liability of former debts demandable from it, it was returned to the attorney as an useless document, but another document filed at the time. A power of attorney from England specifically declares the purchase of the factories was effected with all debts *indebted to and owing* by the factory. This, together with Mr. John Gale's application for the issue of execution of a decree against Toolsee Munder, a debtor to the former proprietor of the factory, and the wording of that application clearly declares he is responsible for all former debts indebted to and owing by the factory: hence the decision of the sudder ameen must be upheld with trifling amendment. Therefore, ordered, the decision of the sudder ameen be affirmed, with the exception of that portion as respects More Taqoor, who, appearing to have had no concern in the suit, is wholly exempt from all liability, and the costs of both courts chargeable to Mr. John Gale.

ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT: H. T. RAIKES, ESQ., JUDGE.

THE 8TH MARCH 1850.

Case No. 12 of 1849.

Appeal from a decision of Moultree Syed Osman Allee, Additional Principal Sudder Ameen, passed on the 9th February, 1849.

Ramtunoo Dutt, (Plaintiff,) Appellant, and on his decease, Kumul-monee and Soudameenee Dossee, guardians of Debnarain and Rajnarain, his minor sons,

versus

Ramdhone Buydeo, Bhuggeerut Haldar, Kalipersaud Haldar, and others, (Defendants,) Respondents.

THE present action arose from the execution of a decree taken out by the plaintiff against the Haldars, who are defendants in this case. The plaintiff had attached, and applied for the sale of, some land and houses as the property of these persons, when the defendant in this suit, Ramdhone Buydeo, came forward and claimed 131 beegahs 18 cottahs of it, with house and premises standing on it, as his own property, and succeeded in procuring its release. This suit is now instituted to set aside the court's summary order, and to make the property liable for the purposes of plaintiff's decree as pertaining to his debtor's estate.

Ramdhone denies its liability, and alleges having purchased the land from Kheerodhur Haldar and Judeestee Haldar, (whose ancestral property, he says, it was,) for 499 rupees, in Bysack 1250 B. S.

The additional principal sudder ameen observes that two witnesses on the part of the plaintiff deposed to the fact of the property being in possession of the other defendants, but that several witnesses on the part of Ramdhone, whose evidence was recorded in the summary suit, proved his possession, and that Babooram, the son of the defendant Bhuggeerut, and a person called Gudadhur, had proved their attestation of the deed of sale: he considered the evidence preponderated in favor of Ramdhone, and dismissed plaintiff's claim.

From this it appears that the additional principal sudder ameen has based his decision on the evidence of Babooram and Gudadhur as to the authenticity of the deed of sale, one of whom, as the son of Bhuggeerut, must be looked upon as an interested party, and deems

the reality of the sale substantiated by the depositions of those witnesses, who spoke to Ramdhone's possession in the summary suit. But on reference to the record, it appears that none of these witnesses were summoned or examined by the additional principal sudder ameen; but that his opinion was guided solely by their recorded evidence. As no reason is stated for not bringing up these persons, or for admitting their former depositions as proof in this case, I remand this case to the lower court for re-investigation. The additional principal sudder ameen will *himself* examine such witnesses as the defendant wishes to summon, and decide the case. The stamp fees to be returned.

THE 8TH MARCH 1850.

Case No. 32 of 1849.

Appeal from a decision of Roy Hurro Chunder Ghose, Principal Sudder Ameen, passed on the 16th April 1849.

Hur Chunder Lahoree, (Defendant,) Appellant,

versus

Brojomonee Dabea and others, representatives of Ram Chand Roy, (Plaintiffs,) Respondents.

THE plaintiff alleged that, on the 24th of Joistee 1237, Mohes Chunder Roy, since deceased, late father of Radakanath Roy, defendant, Anundmoye Dabea, deceased, mother of Panchanun Roy, defendant, Issur Chunder Roy, deceased, husband of Gungamonee Dabea, and Callimohun Roy mortgaged to him, by a deed of conditional sale, a moiety of a talook called Hurredebpore, & third of another called Bursea, and their own share in 15 beegahs of rent-free land in Bang Russa, for a loan of 2,651 rupees. The terms of the mortgage were, that if the mortgagers did not pay the principal with interest at 12 per cent. on the 23rd of Joistee 1240, that the conditional sale should become absolute. Before the term of the mortgage expired, the talook property was sold at public auction, and the plaintiff did not therefore apply to foreclose, but instituted a suit for money lent; and procured a decree in his favor. The decree amounted to 3,538-3-8; of this 2,073-10 was recovered, and to realise the balance, plaintiff attached 26 beegahs of land in Russa garden, and sold the rights and interests of his debtors in the property, but a claim having been put forward by Gooroopersaud, the auction purchaser of māl land, that the above ground was a part thereof, the principal sudder ameen recognised the claim of Gooroopersaud, and annulled the sale. Subsequent to this, the collector instituted a resumption suit to assess the land and resumed it, when plaintiff and Gooroopersaud, and Hur Chunder Lahoree and others appealed to the special court, who, on the ground that the land had been granted in plots of less than 100 beegahs, released it from resumption. Hur Chunder Lahoree, then, in collusion with the former proprietors

(defendants in this case,) took possession under pretence of its being an integral part of the talook sold; but as plaintiff alleges it to be a distinct lakhiraj tenure and the property of his debtors, he has instituted this suit to make it liable to the purposes of his decree and procure the sale of it.

Hur Chunder Lahoree defended this suit, and others filed replies in favor of plaintiff. Hur Chunder Lahoree first pleaded that as he had not been made a defendant in plaintiff's original action against his debtors, he could not be sued in this. Next that plaintiff's suit was barred under Construction No. 1129, and also under the law of limitation. He then took exceptions to all that plaintiff had urged or grounded his claim upon, but did not attempt to show on what grounds he himself resisted plaintiff's claim, or by what title he held the land, or whether he had any title at all.

The principal sudder ameen remarks that Hur Chunder Lahoree does not deny the rights of plaintiffs' debtors to the land in question, nor show any right himself; that the witnesses on the part of plaintiff established the fact of plaintiff's debtors having been ejected from possession by Hur Chunder Lahoree, who has filed no documents, but a copy of a roobukarree declaratory of his possession having been taken under a deed of sale from Muddunmohun Roy and others, whereas from the same proceeding Muddunmohun Roy and others seem to have been proprietors of a certain talook only.

The principal sudder ameen also shows that plaintiff's suit is not barred either by the law of limitation or under Construction No. 1129, the cause of action not having arisen from any of the circumstances therein alluded to.

The appellant Hur Chunder Lahoree appeals against this decision, and, in his pleading, enters into a long explanation of the circumstances under which he took possession of the land; not a word of which was pleaded in the court below, and offers (if permitted) to file proofs and establish his case. This, however, cannot be now admitted, as the appellant gives no valid reason for having omitted to make these statements, or to file his exhibits, if he possess any, in the court below.

The plaintiff's case seems to have been satisfactorily established in the lower court, and I therefore dismiss this appeal, with costs.

THE 18TH MARCH 1850.

Case No. 7 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 7th of December 1849.

Setharah Begum, (Plaintiff,) Appellant,

versus

W. H. Sterndale, (Defendant,) Respondent.

THE plaintiff sued Mr. Sterndale for the rent of a dwelling house, occupied by him from the 1st of July to the 6th of September 1849, at 100 rupees per mensem, or 220 rupees for the above period.

Mr. Sterndale replied that he had entered into an agreement with one Munneejan Begum to rent the house from 1st of July at 60 rupees per month.

Munneejan Begum also instituted a suit in the moonsiff's court against Mr. Sterndale for one month's rent at 60 rupees, which amount Mr. Sterndale lodged in court.

The moonsiff observes, that as these suits are against the same defendant, and for rent of the same house, and during the same period, he took them up together. He says that Setharah admits having disposed of the dwelling house to Munneejan by a deed of "hibbeh-bil-evaz" for 1,000 rupees, and duly registered the deed in the register's office, but disputes the right of Munneejan to let the house, as she has never paid her the money. The moonsiff considered that Munneejan had secured possession of the house through her tenant, Mr. Sterndale, and therefore could now only sue Munneejan Begum for the amount due to her on the "hibbeh-bil-evaz," and therefore decreed to Munneejan the 60 rupees claimed by her, and nonsuited Setharah Begum.

From these decisions Setharah Begum appeals, urging as before, in the lower court, that she has never made over to Munneejan the right of letting the house, and that she served upon Mr. Sterndale a notice, informing him that, if he did not enter into an agreement with her to take a lease of the house and premises for a certain time at 60 rupees per mensem, she should expect him to pay her 100 rupees per month after the expiry of seven days.

On turning to the record of these two suits, I find that the arrangement between Setharah and Munneejan under the deed of "hibbeh-bil-evaz," whatever it was, took place on the 19th of August 1847; that Setharah states that from that time till 1st of July 1849, the house was untenanted. On the 26th of June 1849, Mr. Sterndale entered into an agreement with Munneejan to rent the house at 60 rupees per month, and received peaceable possession of the premises on the 1st July following. On the 29th of August Setharah served him with a notice, that he was to take a lease from her within seven days at 60 rupees per month, or pay her 100 rupees as monthly rent.

It thus appears that Mr. Sterndale had occupied the house from 1st July till 29th August without hearing that Setharah had any sort of claim on the premises, though she now sues him for rent at the rate of 100 rupees per month from the 1st of July till the 6th September, that is, till the expiry of the seven days' grace she herself had fixed. As Setharah has failed to show any fraud or collusion on the part of Mr. Sterndale in getting possession, who, on the contrary, shows good grounds for his believing that Munneejan was owner of the house, and that he received quiet possession from her, I consider Setharah Begum's demand as quite illegal, and whatever may be considered her rights as to the property leased to Mr. Sterndale, she could have no claim upon him for rent prior to the date and expiry

of the notice, she herself served upon him. This being the point now before the court, I consider her claim should be dismissed, and not simply nonsuited, as she can have no right of action against the present defendant, I therefore amend the moonsiff's order on that point, and dismiss the claim. As the respondent was not summoned, her expenses in this appeal are not allowed.

THE 18TH MARCH 1850.

Case No. 8 of 1850.

Appeal from a decision of Mr. Wright, Sudder Moonsiff, passed on the 7th of December 1849.

Munneejan Begum,
versus

W. H. Sterndale and Setharah Begum, opposing party, Appellant.

THE particulars of this case are fully detailed in appeal case No. 7, decided this day. The reasons for the decision are given by the moonsiff in connection with that case also.

The moonsiff decreed the amount to plaintiff, which had been paid into court by the defendant, and rejected the pleas of Setharah Begum, the opposing party, who has preferred this appeal.

The reasons of appeal are the same as those pleaded by the appellant in case No. 7; and, for the reasons given in the decision of that case, the moonsiff's order of the 7th December in this case is confirmed. As the respondents were not summoned, their expenses are not provided for in the decree.

THE 18TH MARCH 1850.

Case No. 34 of 1849.

Appeal from a decision of Roy Hurio Chunder Ghose Bahadoor, Principal Sudder Ameen, passed on the 25th of May 1849.

Mohes Chunder Roy, Ram Chand Adito, and Anundo Chunder Sircar, (Defendants,) Appellants,

versus

Kullun Manjee and Jecrum Manjee, (Plaintiffs,) Respondents.

THE plaintiffs state that they had hired and loaded two boats with reed flags, cut in the Soonderbuns, and brought them to Calcutta with the intention of selling them. That when they arrived at Panchothah ghat, the defendant Ramchand Adito wished them to bring the boats to his master Mohes Chunder Roy's "mart," and as the boatmen objected to do so, (the manjees then being on shore) Ramchand and others with him attempted to carry them there by force.

The boatmen called for assistance, and the toll ghaut people and police rescued them and anchored the boats at the toll ghaut. The

next day a number of people, on the part of Mohes Chunder Roy, forcibly carried off the boats and cargoes to Mohes Chunder's "mart," where part of the cargo was taken out and sold by them, and more of it wantonly scattered about and lost: the loss thus sustained by the owners was so great that their boats were sold at auction by the toll superintendent to defray the amount of the toll leviable from them. Damages to cover this loss to the amount of 564, value of boats and cargo, are claimed from the defendants.

The defendant first pleaded that the plaintiffs had no right to sue together in one suit, as these boats and cargoes were separate property and were disposed of separately; that the sale of them was caused by no act of theirs, but because the boatmen could not pay the toll; and lastly, they pleaded that the real manjees are Ekin and Banoo, that the plaintiffs are only common boatmen.

The principal sudder ameen decreed the case against the defendants for the whole amount claimed. They have appealed against this decision on the general pleas put forward in the lower court; and Mohes Chunder Roy also urges that there is no proof whatever that the other defendants acted under his order or directions, or that if the plaintiffs sustained a loss through their acts, he can be made legally responsible for it.

I observe that the principal sudder ameen states, in his decision, that the facts alleged in plaintiffs' statement are established by the evidence of Muddenmohun Bose, toll darogha, Ramkoomar Moitre, mohurir, and Gungaram and Ramsing, toll ghaut chaprassies. I find however that the depositions of Muddenmohun and Ramkoomar were taken by the collector of the town of Calcutta, on interrogatories forwarded to him by the principal sudder ameen, because being Government servants they could not conveniently leave their duties. This proceeding of the lower court appears to me to be contrary to the law made and provided by Act VII. of 1841, for taking the examinations of absent witnesses. In the first place, there was no application made by any of the parties to the suit for a commission under the Act; and although the parties resided within the local limits of the Supreme Court, the commission was not directed as desired by Section 6, nor any reason given for departing from the rule there laid down. There are no reasons given as required by Section 5, for delegating this authority to another, and as the parties are generally to be found in Calcutta, the distance does not make it imperative on the court to have recourse to this measure of taking evidence, and the reason given, merely the inconvenience of Government servants leaving their duty, is not one alluded to or apparently contemplated in the law. I therefore return this case to the principal sudder ameen, that he may summon the parties and examine them at his own court and then decide the case. The stamp fees of this appeal to be returned.

THE 20TH MARCH 1850.

Case No. 250 of 1849.

Appeal from a decision of Baboo Banemadhub Shome, Moonsiff of Paterghotta, passed on the 9th of August 1849.

Sustecram *alias* Sustee Churn Mytee and Habeeb Baparoo,

(Plaintiffs,) Appellants,

versus

Calloo Payk, Durponarain Cauzee, and Ramdhone Gaya,

Shekarrees,

Kalikanth Roy and Rajkissen Chowdree and other Zemindars of
Dhopa, (former Defendants,) Respondents.

THE plaintiffs state that they are "shekarrees," and obtain a livelihood by shooting game and wild-fowl and selling them. That they applied to the zemindars of Dhopa (who are made defendants in this suit) for a pottah to shoot all kinds of wild-fowl frequenting their lands, and after a notice had been issued by the zemindars to ascertain if any one objected to the measure, they received two pottahs from them, for their respective shares in the talook, authorising them to shoot wild-fowl of every description within the precincts of their zemindaree for a yearly payment of 20 rupees. That the three first named defendants often disputed their right to shoot, and caused quarrels and assaults, which took them into the fouzdar's court, and on their case being referred to the sudder ameen, he remarked that the matter in dispute between them, could only be settled by having it determined whether or not they possessed the exclusive right of shooting in the zemindaree. This action was therefore brought by them to establish their exclusive right of shooting wild-fowl within the Dhopa zemindaree under the pottah they had acquired, and to recover the sum of 149 rupees, computed value of pottah and of wild-fowl lost to them through the acts of the defendants.

The zemindar defendants admitted the grant of the pottah to the plaintiffs, and generally supported their claim.

The three first named defendants question the legality of plaintiffs suing them on such grounds as they have done, assert that the privilege of shooting has always been open to all, both natives and Europeans, and that they never heard of such a monopoly or of a value being set upon it.

The moonsiff considered the pottah illegal, and one that could not be granted by the zemindars. He observes that as long as men can keep birds and beasts under their control, they may possess an exclusive property in them, but while the animals remain at large no one can claim them. That should they return to their owners, and can be recognised by marks, and their owners prove their ownership in them, they may claim them; otherwise they become the

property of any one who can catch them. That no one can hold a pottah for any thing so uncertain as this, and that, as the zemindar can only claim rent for the products of his land, and the birds and beasts, which wander on the face thereof, cannot be classed amongst its products, the zemindars cannot grant pottahs for them. The moonsiff then refers to Blackstone's Commentaries on qualifications under the game laws, but considers them inapplicable to this country. The moonsiff then refers to the evidence of the witnesses, which he deems insufficient to establish the authenticity of the pottahs, though he says the zemindars in their replies admit having granted them to the plaintiffs. He also doubts the practice of giving such pottahs being general, or this, he thinks, would not have been the only instance brought to his knowledge: these circumstances led the moonsiff to doubt the power of the zemindars to grant such a pottah to plaintiffs, and he therefore dismissed this suit.

The plaintiffs appeal against this decision, and argue the right of the zemindar to give them this pottah, and that the game and wild-fowl frequenting the lands of their estate must, to a certain extent, be their property, and that they can make over to others the exclusive right of shooting them on their ground.

JUDGMENT.

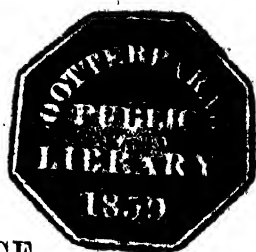
This is altogether a new case, I can find nothing of the kind in the reported decisions. The plaintiffs are "shekarrees," and claim the exclusive right of shooting game and wild-fowl within a certain locality on the strength of a pottah granted to them by the zemindars. The action is brought against other shekarrees who gain a livelihood by killing game, and have carried on their calling within the precincts of the locality defined in the plaintiffs' pottah, and the zemindars, who gave the pottah, are also made defendants, thereby putting in issue the right of the zemindars to give them this exclusive privilege, and requiring them to confirm and establish it.

The moonsiff has dismissed the plaintiffs' claim, on the ground that the zemindars could not legally grant a pottah of this description if they wished. I do not consider this to be the exact point which the court was called to decide upon, inasmuch as the power to grant the pottah is not so much questioned, as the right of the plaintiffs to prevent the other defendants from shooting over the lands of Dhopamanpore zemindaree, because they (the plaintiffs) hold this pottah. It is admitted by the plaintiffs that they applied to the zemindars for this pottah and voluntarily agreed to pay the jumma fixed. The only question left is whether other parties are under these circumstances to be excluded from shooting game and wild-fowl within the same zemindaree. In deciding so novel a point, it is first necessary to enquire whether the zemindars themselves possess the exclusive privilege of shooting game and wild-fowl within their own zemindarees, because on this

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ZILLAH BACKERGUNGE.

PRESENT: W. H. MONEY, ESQ., JUDGE.

THE 1ST FEBRUARY 1850.

No. 2 of 1846.

Regular Suit.

Mr. Ignatius Panioty, son of Constantine Panioty, Plaintiff,
versus

The Rev. H. R. Shepherd, auction purchaser, and Mrs. Elizabeth Brillard's adopted son, name unknown, and Kishen Mungul Bysak and Manik Chand Bysak, decree-holders, installed in the place of Mrs. Brillard, Defendants.

THIS suit was instituted by the plaintiff to reverse the sale of a share of his estate, which took place under a decree of court, and to obtain possession, with mesne profits from the date of sale; laying his damages at rupees 64,763, 2 as., 7 p., 4 k.: he represented that there was a 2 as., 13 g., 3 c., 3 k. share, and a 2 as., 16 g., 1 k. share of pergunnah Chunderdeep, recorded in two separate lots in the Backergunge collectorate, making in all a 5 as., 10 g. share, which was the property of his grandfather, Panioty Alexander: that by his grandfather's will this 5 as. 10 g. share being subdivided into sixteen portions, a 6 as. share devolved upon his uncle, George Panioty, a 4 as. share on his uncle, Alexander, a 3 as. share on his uncle, John, and a 3 as. share on his father, Constantine: that on the demise of his uncle, Alexander, half of his 4 as. share being divided, a 13 g., 1 c., 1 k. share was added to the share of his uncle George Panioty, who by his will left his 6 as., 13 g., 1 c., 1 k. share to his (plaintiff's) uncle, John Panioty, who again transferred the same to his (plaintiff's) father, Constantine, and he was duly installed as the guardian and manager on behalf of himself and his brother, Theodore Panioty: that Mrs. Brillard having obtained a decree at Dacca against his uncle, George Panioty, his 6 as. share was lotted for sale at the collectorate of Backergunge, on the 19th of Bhadoon 1249, to realize the sum of rupees 15,302, 6 as., 6 p.: that at the urgent request of his father, the decree-holder consented to stay the sale for a month, and gave a petition to that effect to the judge of Dacca, on the 27th August 1842, corresponding with the 12th Bhadoon 1249; but in consequence of the opposition of Kishen Mungul and Manik Chand

Bysak it was disallowed, and on the 19th Bhadoon abovementioned the defendant, Mr. Shepherd, through his agent, Nund Coomar Dass, purchased first of all out of the 2 as., 13 g., 3 c., 3 k. share, No. 1721, a 1 a., 3 k., $12\frac{1}{2}$ t. share for rupees 9,600, and then out of the 2 as., 16 g., 1 k. share, No. 1722, a 1 a., 1 g., $7\frac{1}{2}$ t. share for rupees 8,000: that his father gave a petition to the court at Dacca against that sale, which was rejected, and then attempted to sue as pauper in the civil court of this district; but in consequence of the existence of property, his pauperism was disallowed by the principal sudder ameen: that, as the plaintiff has succeeded to the property on the demise of his father and brother, he sues to reverse the sale, which he pronounces to have been irregular on many grounds: that it was irregular to sell in spite of the original decree-holder's request to suspend proceedings, and to have recourse to the sale under the impression, as mentioned by the judge of Dacca, that Kishen Mungul and Manik Chand Bysak had succeeded the original decree-holder, was still more irregular, for the claim of Mrs. Brillard was rupees 15,302, 6 as., 6 p., and that of Kishen Mungul and Manik Chand Bysak against her amounted only to rupees 3,932, 10 as.: that if, according to custom, a sale had been ordered for the realization of this latter amount, his father would have had no difficulty in meeting the demand, and even, if not paid, the sale of a small portion of the share, which realized rupees 9,600, would have been sufficient; at all events there would have been no necessity for the sale of the entire share, which actually did take place: that there was no indication in the papers of Kishen Mungul and Manik Chand Bysak having adopted measures for carrying out the decree, neither did the sale proceedings nor the sale advertisement make any allusion to their having succeeded the original decree-holder: that the insertion in the sale advertisement and lotbundee of the rights of Mrs. Maria and John Panioty was also irregular: that the property being situated in this district, the sale should have taken place under the orders of this court, and not under an order of the Dacca court direct to the collector of this district: that the provisions of Section 12, Regulation XLV. 1793 had not been attended to, inasmuch as the sudder jumma of the land sold was not recorded, nor was the proclamation issued in the chief village; and the auction purchaser being fully aware of the irregularity of the sale, had been anxious for him (plaintiff) to withdraw his claim: that in consequence of the appointment of a surburakar and his embezzlement of the assets, there were no means of paying the amount of the decree: that, if the collector, at his father's request, had enquired into the surburakar's malversation and suspended the sale, it was more than probable that the amount of the decree might have been realized: that on these grounds he considered the sale to have been irregular and unjust.

The Rev. H. R. Shepherd replied, that the plaintiff was not empowered to prefer this suit: that neither he nor his father were the

heirs of George Panioty, as was apparent from the will of George Panioty, and the deed of relinquishment of John Panioty, upon which the plaintiff founds his claim: that by the terms of George Panioty's will it was expressly stated that, if John, his brother, paid his debts and supported his wife, Mrs. Maria Panioty, he was then to receive half, and Theodore Panioty, his nephew, the other half of George's property: that as John Panioty resigned his connection and interest in that will by a regular deed deposited in court, and the plaintiff's father, Constantine, had undertaken to perform all the conditions of that will, and was duly authorised to do so by a proceeding of the civil court, dated the 23rd December 1831, in which the terms of that will were recorded, and as the property in question was sold to realize George Panioty's debt to Mrs. Brillard, which the plaintiff's father by the obligations of that will was bound to have liquidated, the plaintiff's attempt to reverse the sale upon the strength of those documents was very questionable: that had George Panioty's debt been paid, there would of course have been no necessity for the sale: that as John Panioty had relinquished his interest in George's will, and neither he nor his nephew, Theodore, nor the plaintiff's father had fulfilled the conditions, and as John Panioty had acknowledged in court the propriety of the sale, the plaintiff's claim could not be maintained: that on a former occasion the plaintiff had mentioned his brother, Theodore, as having absconded, but in his plaint he mentions him as deceased, and as he had not stated on what date, or month, or how he died, it was difficult to comprehend the actual facts regarding Theodore, nor had the plaintiff explained how he succeeded to his brother's portion, seeing that there was a sister alive: that as for the reasons adduced the plaint was irregular, any further arguments were unnecessary; at the same time he would shew that the plaintiff's objections to the sale were untenable for the following reasons: that Kishen Mungul and Manik Chand Bysak having a decree against Mrs. Brillard, whose decree against George Panioty amounted to rupees 15,302, 6 as., 6 p., and there being no expectation of realizing their decree in consequence of the collusion of the plaintiff's father, Kishen Mungul and Manik Chand Bysak gave repeated petitions and were installed in the place of Mrs. Brillard, so that, even if she did give any petition, the sale could not have been stayed on that account: that, as Mrs. Brillard and Kishen Mungul and Manik Chand Bysak were entitled to receive the amount of their decree from the sale of the property, the decree must be considered as one and undivided, and there was nothing irregular in selling the property of the debtor and realizing the entire amount of a decree to liquidate the demand of one decree-holder: that the plaintiff's father never made any request for a separate lotbundee and sale advertisement, with a view to liquidate the demand of Kishen Mungul and Manik Chand Bysak, nor were such separate lotbundee and advertisement necessary, and in the miscellaneous petition given by the plaintiff's father, this objection was

never entertained ; and if, moreover, he had deposited the amount of the decree due to Kishen Mungul and Manik Chand Bysak, he might have petitioned for a postponement of the sale : that it appeared from a proceeding of the civil court, dated the 26th January 1843, when the plaintiff's father petitioned against the sale, Mrs. Brillard wished to receive the amount of the sale proceeds, and with the other decree-holders did receive her portion : her petition, therefore, said to have been given prior to the sale, must have been presented through the collusion of the plaintiff's father and Mrs. Brillard's agent : that as, in the decree and lotbundee for which the property in question was sold, the name of Mrs. Brillard alone was recorded, it was necessary to realize the entire amount inserted in that statement : that, on the 17th Jyete 1247, Kishen Mungul and Manik Chand Bysak petitioned the principal sudder ameen of Dacca, to prevent the decree of Mrs. Brillard being compromised, and an intimation to that effect was given to the parties concerned ; on the 22nd Jyete of the same year, they petitioned the judge, and were duly installed in the place of Mrs. Brillard, under the spirit of Constructions 293 and 1248, and gave repeated petitions for the sale of the property in question, and deposited the peons' tulabana, and at their instance a proceeding was sent to the collector of Backergunge not to stop the sale as was contemplated by the collusion of the plaintiff's father : that as the sale advertisement and lotbundee had formerly been prepared on account of Mrs. Brillard, there was no occasion afterwards to insert the names of Kishen Mungul and Manik Chand Bysak, and the lotbundee could not be injured by the omission, as the sale took place to realize the entire amount of Mrs. Brillard's decree : that Mrs. Maria was the wife of the original debtor, and John Panioty was empowered by her, Mrs. M., to pay her debt, and as the plaintiff had himself acknowledged their proprietary rights, there could be no irregularity in inserting their names in the lotbundee : that as Mrs. Brillard's decree was originated at Dacca, the sale was ordered by the judge of that district, in conformity with the provisions of Sections 2 and 3, Regulation XLV. 1793, and Section 7, Regulation VII. 1825 : that the jumma, which was payable to the collector, had been inserted in the sale advertisement and lotbundee, and the notice of sale duly proclaimed in conformity with Section 12, Regulation XLV. 1793 : that the objections now urged by the plaintiff were never preferred immediately after the sale, and therefore it was irregular to bring forward any new matter not before comprised in his miscellaneous petition : that the allegation of his wishing the plaintiff to give a deed of acquittance by way of withdrawing his claim, was pure fiction : that there was no surburakar as mentioned by the plaintiff when the sale occurred, and even if such had been the case, sales under a decree of court could not be stayed on that account : that the plaintiff's father in a petition presented to the civil court of this district, dated the 25th Sawun

1250, had admitted the propriety of the sale, and the defendant concluded by observing that the plaintiff should be nonsuited for not including the collector as defendant, and quoted the provisions of Section 25, Regulation XII., 1841, and Section 7, Regulation II., 1805, as barring the plaintiff's suit from lapse of time.

The plaintiff, in his replication, alluded to the terms of his uncle George's will, and deed of his uncle John, and observed that after the death of his father and brother Theodore, he was sole heir, and had therefore instituted this suit in that capacity, and the defendants in the sale advertisement had acknowledged his proprietary right: that there was no occasion to mention the date of his brother Theodore's decease, as he had been installed in his room by the civil court, prior to the institution of this suit: that his father had paid the demands of many decree-holders, and the fact of his having paid a portion of Mrs. Brillard's claim, was recorded in the sale advertisement and lotbundee: that Kishen Mungul and Manik Chand Bysak had no claim against his father, but against Mrs. Brillard; and if she was slack in executing her own decree, there was no necessity in the court to resort to sale to realize its amount; and to do so, notwithstanding Mrs. Brillard's request to postpone the sale, was irregular, and opposed to Construction 752: that in every case of a decree-holder having been appointed to succeed another person, the name of the former was invariably inserted in the sale advertisement and lotbundee. He repeated the allegation of the sale having been conducted in opposition to the Circular Order of the 8th May 1840, and in contravention of Regulation XLV. 1793, Section 12, as regards the omission of the jumma of the land sold, and the failure to issue the notice of sale in the chief village, and observed that the shares were separate with a separate jumma, and were not answerable for the arrears of each other, that in the return to the notice of sale the words "surezumeen joree" were entered through the collusion of the decree-holder, for nothing could be inferred from that return, but that the notice was posted at Burrisaul: that in cases of sale under a decree of court, it was not usual to make the collector a defendant, and Section 25, Act XII. 1841 had nothing to do with the sale in question, but with sales to realize Government revenue, and Section 7, Regulation II. 1805 applied to other matters: that his father, in the petition alluded to, had expressly stated his intention to sue for the reversal of the sale, and Mrs. Sophia Athanes had been induced by the defendant, auction purchaser, to give a false petition, which, in consequence of her having no sort of right to the estate in question, could not affect his claim.

Lawrence Clowse replied to the same purport as the auction purchaser, and remarked in addition that he was the adopted child of Mrs. Brillard: that Mrs. Brillard by her will left him a 10 anna share, and Louis Faceo, her husband's nephew, who was in Europe, a 6 anna share of her property, with rupees 2,000 in cash for him-

self, appointing him and the Revd. Fre Salvadore De St. Anna, her executors: that the plaintiff therefore should have included those persons as defendants, and not him alone: that Mrs. Brillard, on the 6th Maugh 1248, had acknowledged the succession of Kishen Mungul and Manik Chand Bysak, and had requested the sale of the property in question for the purpose of realizing their demand as well as her own: that the petition said to have been given by her to stop the sale must have been given without her knowledge, and neither her mooktar nor her vakeel were authorised to give such a petition, and after the sale, Mrs. Brillard received her portion of the sale distributed proceeds, as also Kishen Mungul and Manik Chand Bysak, and likewise Domingo Manuel D'Silva, whose heirs should have been included as defendants.

The plaintiff, in his replication to this answer, declared that the will of Mrs. Brillard had never been filed in any court relative to the appointment of executors, and therefore his suit could not be considered faulty: that the petition of Mrs. Brillard could not have been given without her knowledge, and as Domingo Manuel D'Silva was not mentioned in the decree, on account of which the sale took place, there was no necessity to name him as a defendant.

Lawrence Clowse's rejoinder was merely a repetition of his answer.

Mrs. Sophia Athanes filed a petition, claiming a 3 annas 4 gundas share in the property, and complained of the plaintiff not deducting that share when he preferred his suit: that the plaintiff's father, in a summary petition to reverse the sale, and again in his petition to sue as a pauper, had distinctly stated her particular share.

The Reverend H. Shepherd, in his rejoinder, alluded to the plaintiff's disclaimer of his being the heir of George Panioty, and to his omission to file the will of that person, and the deed of his uncle John, upon which he grounded his present claim, and to his having mentioned in a petition, dated the 16th March 1847, that these two documents had been transmitted to the special commissioner, but when, or how, or in what case, he did not explain: that until these documents were duly filed in court, the plaint was unworthy of attention, and the heirs of his brother Theodore should have either joined him in the suit, or else have been made defendants, and although the plaintiff alluded to his having been installed in his brother's place in a miscellaneous proceeding, that could have no weight in a regular suit, nor could the plaintiff's claim be grounded upon the miscellaneous proceeding of the civil court of the 23rd December 1831; for by that proceeding, as quoting the terms of George Panioty's will, it was clear that the plaintiff could not possess the property in question, until he had paid the entire debts of George Panioty: after repeating the fact of the principal sudder ameen of Dacca having issued an injunction to the heirs of George Panioty, not to compromise their debt with Mrs. Brillard, and the fact of their being installed in her room by the judge, and

Mrs. Brillard's petition of the 6th Maugh 1248, signifying her wish to receive her money, and the depositing in court by Kishen Mungul and Manik Chand Bysak of the peons' fees, and as under the orders of the judge on the 15th Sawun 1249, in connection with the sale, he observed that, even supposing Mrs. Brillard had given the petition alluded to, for the purpose of postponing the sale, it could not have been stayed without the consent of Kishen Mungul and Manik Chand Bysak, and therefore Construction 752 did not apply to this case: that the petition was not signed by Mrs. Brillard, and her vakeel had no authority to act contrary to the terms of his vakalut-namah; and if the petition had been true, Mrs. Brillard could not after the sale have petitioned for her portion of the sale proceeds: that the objections of the plaintiff's father to the sale had been overruled by the zillah and Sudder Courts, which would not have been the case, had they really had any foundation: that the notice of sale had been issued according to the law, and was merely intended for the information of the debtor, and it was quite clear that the plaintiff's father had been aware of the intended sale, and he had, moreover, in the third paragraph of his petition, dated the 25th Sawun 1250, expressed his concurrence in its results: that as Mrs. Athanes was plaintiff's aunt, it was not likely that he could influence her to give any claim, and as the plaintiff's father had mentioned her proprietary right, and as Domingo Manuel D'Silva had received his share of the sale proceeds, the omission to include Mrs. Athanes, and the heirs of Domingo Manuel D'Silva, as well as the other heirs of Mrs. Brillard, was irregular, and rendered the plaint defective.

This case was in the first instance instituted in the principal sudder ameen's court, whence it was transferred to this file in the time of my predecessor, and has been pending from causes beyond the control of this court: several documents were filed and oral evidence adduced before the principal sudder ameen, and subsequently in this court the parties to the suit have filed further documentary evidence, including the will of George Panioty in original, and the deed of John Panioty, accompanied by remarks in support of their respective pleas. Some months after the case had been transferred to this file, Kishen Mungul and Manik Chand Bysak presented a petition with an answer, which they were anxious to file, but their petition was rejected under Construction 375.

As the auction purchaser, Mr. Shepherd, and Lawrence Clowse, the heir of Mrs. Brillard, have pronounced the plaint to be irregular on several grounds, it becomes necessary in the first place to examine those objections *seriatim*. The auction purchaser objects—first, that the plaintiff could not sue as he was not the heir of George Panioty; secondly, that he could not sue upon the strength of George Panioty's will, for by the terms of that document George Panioty's debts were to

be paid first, and then his property to be enjoyed by John Panioty and Theodore Panioty respectively, and that neither John Panioty, nor the plaintiff's father, nor the plaintiff himself, had conformed to the conditions of the will by liquidating those debts; thirdly, that John Panioty had acknowledged the propriety of the sale; fourthly, that the plaintiff had formerly spoken of his brother as having absconded, and on the present occasion had mentioned his death, without stating the date or other particulars; fifthly, that he had not explained how he succeeded to his brother's portion during the life time of his sister; sixthly, that the plaintiff had omitted to include the collector as a defendant; seventhly, that his suit was barred under the provisions of Act XII. 1841, and Regulation II. 1805; eighthly, that he ought to have included Mrs. Sophia Athanes and the heirs of Domingo Manuel D'Silva in his suit, the plaintiff's father having acknowledged the proprietary right of the former, and the latter having received a portion of the sale proceeds. With respect to the first objection it is to be remarked that the plaintiff does not sue as heir of George Panioty, but of his father and brother. Second, the terms of the will of George Panioty were that John was to be the sole manager, and, after paying George's debts, he and Theodore Panioty were to enjoy the property in equal shares, and not, as inferred by the auction purchaser, that the debts were to be paid *first* and *then* that they were to have possession of the property, for without such possession how could it be expected that George Panioty's debts were to be paid? From a copy of the notice of sale it seems that 1,200 rupees had been paid towards the liquidation of George Panioty's debts, and in that very notice the plaintiff's right was recorded. The auction purchaser, in his reply, admitted the will of George Panioty having been filed in court on a former occasion, and, in his rejoinder, throws suspicion upon the plaintiff's claim, because that document and the deed of John Panioty were not filed in this case, and after they were so filed an imputation is cast upon the genuineness of the will, in consequence of there being Mr. George Panioty's mark and not his signature. It appears that the will was formerly filed in a case in this court, in which Mr. Athanes was plaintiff, *versus* John Panioty, and the deed of John Panioty in a case where George Panioty was plaintiff, *versus* Rughoonath Rae, from which records the plaintiff has recently taken them: on the top of the will it is recorded by the judge in his own handwriting, that it "was filed in court on the 8th September 1831, as the *bonâ fide* will of George Panioty," and filed by Ram Kannye Rae, now a vakeel on the part of the auction purchaser, and attested by several witnesses: the deed of John Panioty was registered on the 16th December 1831, and on the 23rd December 1831, as admitted by the auction purchaser, the plaintiff's father was installed in the place of John Panioty: the case of Ram Surroop Pandee quoted by the auction purchaser in his petition, is not applicable, for in this

case the will was not disputed, but admitted by the auction purchaser, it has, moreover, been acted upon by the civil court on former occasions; and for a period of eighteen years no denial of its validity nor any imputation appears to have been cast upon it by any one; there can be no doubt therefore of the plaintiff's right to ground his claim upon that document. Third, as regards John Panioty's consent to the propriety of the sale, whether correct or not, it could not affect the plaintiff's claim. The fourth and fifth objections are not tenable; for this is not a claim of inheritance, and the plaintiff was duly installed in his brother's place by an order of court, dated the 22nd June 1844. The sixth and seventh objections are not applicable to this case. Lastly, from a copy of a will of Panioty Alexander, dated the 17th January 1828, it does not appear that Mrs. Sophia Athanes ever received any portion of the property, but merely a money allowance, so that the objection on this score, as well as the claim advanced in her petition, are of no avail.

As regards the heirs of Domingo Manuel D'Silva not being included as defendants, I confess that at first the objection appeared sound, but on further consideration it is clear that Domingo D'Silva did not as decree-holder have any hand in the sale of the property in question, nor did he receive any money as distributable assets with the other decree-holders, but as is apparent from a copy of proceeding of the judge of Dacca, dated the 12th August 1843, he did not receive any of the balance or surplus proceeds of sale until the entire claim of Mrs. Brillard had been satisfied. The precedent furnished by the auction purchaser in the case of Ram Sundur Gosye and others, appellants, *versus* Maharajah Grees Chunder and others, respondents, is not in point; for in that case, there were two decree-holders who caused the sale, and *both* received the amount proceeds of sale, and only one of them was made a defendant. In my opinion, therefore, there was no necessity to include the heirs of Domingo D'Silva, nor do I perceive any inconvenience or irregularity likely to arise from the omission. I may observe in this place that, from the tenor of the auction purchaser's remark in his rejoinder, regarding the objections of the plaintiff's father in his miscellaneous petition being overruled by the Sudder Court, he would seem to infer that those orders were final and a bar to a regular suit, but this has already been explained in the Sudder Dewanny Select Reports, dated 12th June 1841, vol. VII, page 35, a copy of doul bundobust, dated the 23rd April 1849, and a copy of a proceeding of the Sudder Court of the 8th May 1849, filed by the auction purchaser to shew the irregularity of the plaint, because in the former document the plaintiff had acknowledged the auction purchaser's rights, and in the latter had denied his responsibility for the payment of George Panioty's debts, are not applicable. In the former papers, there was no such acknowledgment at all. The sharers of the estate, in their arrangements with Govern-

ment for some resumed land, merely mentioned their existing rights and signed the paper, and in the latter document there was no denial of responsibility as alleged by the auction purchaser, for the proceeding had reference rather to John Panioty.

The objections of Lawrence Clowse were somewhat similar to those of the auction purchaser, with this additional remark that Louis Faceo, the nephew of Mrs. Brillard's husband, and the Revd. Fre Salvatore De Santa Anna, her executor, should have been included as defendants. No evidence, however, has been adduced in support of this objection, while from a copy of a petition of Lawrence Clowse himself, dated the 21st July 1848, and filed by the plaintiff, it is evident that he was sole proprietor under the will of Mrs. Brillard. No further remarks therefore are necessary on that point.

Having disposed of the objections to the plaint on the grounds of irregularity, and the parties in the suit having filed every necessary document, and every possible argument having been exhausted in support of their respective pleas, in which indeed no pains have been spared, and, as admitted verbally by the respective pleaders, there being nothing further to urge, I at once proceed to discuss the real merits of the case.

The plaintiff's allegation of the irregularity of the sale is—*first*, that it was irregular to sell against the wishes of the original decree-holder, Mrs. Brillard; *secondly*, that it was still more irregular to do so, under the supposition that Kishen Mungul and Manik Chand Bysak had been installed in her place, for the decree of Mrs. Brillard was very much in excess of the demand against her; *thirdly*, that if a sale had been made to realize the demand of Kishen Mungul and Manik Chand Bysak, there would have been no difficulty in meeting it, and if not paid, the sale of a small portion of the property would have been sufficient; *fourthly*, that there was no indication of Kishen Mungul and Manik Chand Bysak having adopted any measures for carrying out the decree, and neither the lotbundee nor other sale proceedings alluded to their having been installed in the place of the original decree-holder; *fifthly*, that the insertion of the names of Mrs. Maria and John Panioty in the lotbundee was another ground of irregularity; *sixthly*, that the property being situated in this district, the sale should have taken place under the orders of this court, in accordance with the Sudder Court's Circular of the 8th May 1840; *seventhly*, that the provisions of Section 12, Regulation XLV. 1793 had not been complied with, inasmuch as the jumma of the land sold was not specified, nor the notice issued in the chief village; and *eighthly*, that the assets of the estate had been embezzled by the surburakar, an enquiry into whose conduct previous to the sale might have given his father an opportunity of liquidating the amount of the decree.

As the first, second, and third objections are connected, it is as well to notice them together. It appears that Kishen Mungul and Manik Chand Bysak obtained a decree against Mrs. Brillard for rupees 3,822, besides interest, and on the 17th Jyte 1247, petitioned the principal sudder ameen of Dacca to prevent Mrs. Brillard and her debtors, George Panioty, compromising their debt. On the 22nd Jyte, they were installed in the place of Mrs. Brillard by the judge, and on the 6th Maugh 1248, Mrs. Brillard acknowledged the act of installation of Kishen Mungul and Manik Chand Bysak, and wished for the sale of the property in question in pursuance of that arrangement, so that any petition she may have given to suspend the sale without the consent of Kishen Mungul and Manik Chand Bysak could not of course be attended to. Considering, moreover, that after the sale Mrs. Brillard petitioned for the amount of her share of the sale proceeds after payment to Kishen Mungul and Manik Chand Bysak, it is improbable that the petition said to have been given by her before the sale was given with her knowledge or consent. With respect to the decree of Kishen Mungul and Manik Chand Bysak being so much less than that of Mrs. Brillard, I can find no case exactly in point; and Construction 293 is silent as to the amount being more or less, and the precedent furnished by the auction purchaser in the case of Damoodur Chunder Rae is not applicable, as in that instance the decree of the original decree-holder was less than the amount of the decree against him. It is evident, however, that Kishen Mungul and Manik Chand Bysak were duly installed in the place of Mrs. Brillard, under Constructions 293 and 248, without any opposition at the time, and subsequently with the approbation of Mrs. Brillard, and even if there had been opposition, it would have been of no avail:—*vide* the case of Gopal Kishen, petitioner, filed by the auction purchaser in the Summary Reports for June 15th, 1841, in which one decree-holder was considered to have a lien upon the decree given against the petitioner, in favor of his debtor: the amount of either decree is not mentioned, but the principle involved is the same as in Construction 293, and, what is more, it does not appear in the case cited, that the decree-holder whose lien was acknowledged had ever been installed in the place of the other decree-holder, his debtor. I am of opinion, therefore, that neither of the three first objections are tenable. On the fourth point it seems that, on the 19th Bhadoon 1247, Kishen Mungul and Manik Chand Bysak petitioned the judge of Dacca, to send a proceeding to the collector of Backergunge, with an injunction not to listen to any proposal of Mrs. Brillard to stop the sale in collusion with her debtor, and on the 3rd September 1840, a proceeding was dispatched from Dacca: on the 25th August 1840, a proceeding was sent from the same place regarding the peon's tulabana: on the 14th Chyte 1247 Kishen Mungul and Manik Chand Bysak were averse to the appointment of a

surburakar, as they wished to realize their claim by means of sale, and on the 15th Sawun 1249, a petition was given at Dacca depositing the peon's tulabana in connection with the sale under discussion, so that there can be no question of their having exerted themselves to carry out the decree of Mrs. Brillard. Though I do not perceive there was any necessity to mention the amount of the decree of Kishen Mungul and Manik Chand Bysak, seeing that they were installed in the place of Mrs. Brillard, for the purpose of realizing her decree, yet the omission to insert their names as having been so installed in the lotbundee, was certainly irregular and opposed to the practice which prevails. I doubt, however, whether this omission, not being in defiance of the law, is sufficient to invalidate the sale provided it be legal in all other respects. On the fifth point there could be no irregularity, as the plaintiff had acknowledged the proprietary right of Mrs. Maria and John Panioty. Nor do I perceive any error in the sixth point, as the sale advertisement of the property and lotbundee had been prepared under the provisions of Regulation XLV. 1793, and Regulation VII. 1825, previous to the issue of the Circular Order of the 8th May 1840. The last objection will not hold good, as sales under a decree of court cannot be stayed by the fact of a surburakar being appointed, of whose appointment, moreover, no proof has been adduced.

The seventh objection is the most important and requires consideration. In the sale advertisement and lotbundee the entire sudder jumma only of the 2 annas, 13 gundahs, 3 cowrees, 3 krant share, No. 1721, and of the 2 annas, 16 gundahs, 1 krant share, No. 1722, payable to the collectorate is inserted, but in Section 12, Regulation XLV. 1793, it is distinctly declared that the jumma at which the lands are to be disposed of "must be specified," and the proportion of the revenue payable on account of the year in which the sale of the lands may take place, for which the purchaser is to be responsible, or if the exact proportion cannot be ascertained, the rules by which the amount of it is to be adjusted. The omission noticed is clearly illegal, and as from an extract copy from the collector's register of mehals under butwarah for the official year 1842-43, filed by the plaintiff, the shares of George Panioty and Alexander Panioty in the 2 annas, 13 gundahs, 3 cowrees, 3 krants share No. 1721, and in the 2 annas, 16 gundahs, 1 krant share, No. 1722, were distinctly defined with an ijmalce jumma for both shares, there would have been no difficulty in inserting the jumma of George Panioty's share when about to be sold. As to the notice of sale not having been circulated in the chief village, the plaintiff adduced oral evidence before the principal sudder ameen to shew that "Adumpora" was the chief village in the 5 annas, 10 gundahs share of pergunnah Chunder Deep, and that no notice of sale was ever circulated there, and filed in this court copies of account current, deposited by the surburakar in the

collectorate of Backergunge, in 1251, shewing the jumma of Adumpora to be considerably larger than any other village: thus the jumma of

Joar Adumpora was	6,188
Joar Koondalpara, and Busharut,	2,559
Joar Jeebdallun,	804
Joar Nurcattee,	537
Malla howla,	113

The witnesses produced by the auction purchaser before the principal sudder ameen declared the notice of sale had been circulated at Koondalpara, Busharut, Jeebdallun, Nurcattee and Malla howla, and that they were the chief villages, but none of them knew *where* the notice was suspended. Evidence was also taken by the principal sudder ameen to ascertain in what jurisdiction the surburakar's cutcherry at Burrisaul was situated, where the notice of sale was said to have been suspended.* From the majority of the respectable witnesses, of whom one was the surburakar's head mohurer, it appeared that the cutcherry was in the kharija talook of pergunnah Chunder Deep, and not connected with the land disposed of by sale, and none of them could depose to the fact of the notice having been affixed there: of the four witnesses who declared that the surburakar's cutcherry was at Panioty's thatched cutcherry in the 5 annas 16 gundahs share of Chunder Deep, and that the notice of sale was affixed there, one was an inhabitant of Dacca, out of employ for two years till the month of Sawun 1249; another, who went to give rent at Panioty's cutcherry for another person, could not remember how long he had been in the habit of taking the rent, nor the amount of the jumma that person was accustomed to pay; a third, Fatik Chowkedar, could not remember in what division of the town he was chowkedar, in the months of Sawun and Bhadoon 1249, though he narrated other minute details connected with the sale with accuracy. From a copy of a decision of the civil court in the case of Sumboonath *versus* John Panioty and others, filed by the plaintiff, it would seem that the thatched cutcherry alluded to, is lakhiraj purchased land, and not connected with the estate under discussion.

In the copy of the return to the notice of sale, nothing is mentioned about charge for boat hire, and some stress has been laid upon this fact by the plaintiff's vakeel, who filed a copy of a notice in a summary suit, dated the 12th May 1847, and a dustuck dated the 13th May 1847, in which Mr. Shepherd, the auction purchaser, was plaintiff, both of which papers were issued at *Busharut* and *boat hire* charged. In refutation of this the auction purchaser filed some returns of the nazir of the collectorate, dated the 3rd and 4th July and 23rd November 1843, shewing that notices had been issued at Koondalpara and *Busharut*, *without* any charge for boat hire. This again is met by the plaintiff's vakeel to the purport that the notices filed by the auction purchaser relate to the 13 gundahs, 1 cowree, 1 krant

share of the estate, to reverse the sale of which a suit is in contemplation. After all this matter, though suspicious, is not of much importance as affecting the legality of the sale, for it is quite possible that boat hire might be incurred, and the charge omitted by accident.

Supposing, however, that the notices of sale was suspended at the surburakar's cutcherry at Burrisaul, and that it was in the jurisdiction of the land sold, which is by no means proved, and supposing also that Koondalpara, Busharut, Nurcattee and Jeebdallun were the *chief* villages where the notice was said to have been circulated, of which there is doubt, it is quite clear that it was not *affixed* at any of those places as contemplated by Section 12, Regulation XLV. 1793. From the evidence, moreover, adduced by the plaintiff and the account current papers, filed by him, there can be no question that Adumpora was the chief villlage where the notice ought to have been affixed, and although the auction purchaser has filed a precedent of the Sudder Court in the case of Government, appellant, *versus* Hurreepreea and others, dated the 5th September 1832, to shew that the issuing of a notice of sale to the debtor's house and lands was sufficient, this was the dictum of one judge only, and the Regulation must be the guide in this case, in accordance with which the plaintiff has filed a precedent of a full bench of the Sudder Court, dated the 3rd October 1844, in the case of Ranee Moosadhur, appellant, *versus* Roop Koomar, shewing that the notice of sale must be *affixed* in the *chief* village of the land sold.

Considering therefore the sale to have been illegal for the reasons just mentioned, I reverse it, and decree the plaintiff's claim. He will receive possession of the estate in question from the auction purchaser, with mesne profits from the day of sale and interest at the rate of 12 per cent. per annum, from the date of the amount being ascertained. The auction purchaser will receive back from Lawrence Clowse, the heir of Mrs. Brillard, and Kishen Mungul and Manik Chand Bysak, and from the plaintiff, the amount of his purchase money, with interest at the rate of 12 per cent. per annum from the date,* when the money was paid, and Lawrence Clowse and Kishen Mungul, and Manik Chand Bysak will pay the entire† costs of this suit.

* *Vide Select Reports*, 5th June 1844, †vol. VII., page 172.

† *Vide* the case of Collector of Backergunge, appellant, *versus* Indurmuinee Chowdrin, respondent, decided on the 9th March 1848.

THE 9TH FEBRUARY 1850.

No. 23 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 16th February 1847.

Gunga Churn Sein, (Defendant,) Appellant,

versus

Deenonath Rae, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff to recover as heir a 16 cowrees share, the rights of Seedusseree, the wife of his father's brother in a 1 anna share, the property of his grandfather, Indurnarain Rae, forming part of the 4 anna share of tuppeh Sulcemabad, with mesne profits; laying his damages at rupees 1,512, 4 annas, 5 pie.

Uprajeeta Chowdrain, wife of Radhanath Rae, and Gopce Mohun Rae, and Mudun Mohun Rae, and Hurree Mohun Rae, who, with Radhanath Rae, were the grandsons of two other brothers of the plaintiff's father, replied, that Seedusseree had disposed of her share to them by a regular deed, dated the 2nd Poos 1244, and subsequently 8 gundahs, the share of Gopce Mohun and Mudun Mohun and Hurree Mohun, and Radhanath and Rughoonath, and 4 gundahs transferred by Seedusseeree, in all 12 gundahs, and 1 anna, 10 gundahs, the share of Gour Mohun Rae and others, and 4 gundahs the share of plaintiff's father, and 4 gundahs the share of Unund Mye, in all 8 gundahs, were conditionally mortgaged to Parbuttee Chowdrain: and in a power of attorney presented to the butwarah ameen, the plaintiff had acknowledged the existence of the shares thus described, and give no objections to the transfer made by Seedusseeree, and both they and the plaintiff had created howlas in the estate according to those very shares, that as Parbuttee Chowdrain had obtained possession of the land so mortgaged by a decree of court, the plaintiff's claim was irregular.

Deenonath Rae, in his replication, alluded to Seedusseeree's interest in her share being merely a life tenure, and declared that there was no mention of the deed of transfer in the decree obtained by Parbuttee Chowdrain; and as he was not a party to that suit, he could not be affected by its results under Construction 744.

Gunga Churn Sein, who purchased Parbuttee Chowdrain's decree, supported the statement of the defendant regarding the conditional mortgage, but admitted that a decree was only given for a 4 gundahs, 2 krants, 18 teels share.

The principal sudder ameen, considering Seedusseeree's inability under the Hindoo law to alienate her husband's property to the prejudice of the heirs, and the fact of the plaintiff being her lawful heir, and there having been no judgment given regarding the deed of transfer executed by Seedusseeree in the case instituted by Parbuttee Chowdrain, and no mention of it in the mortgage deed, and

the plaintiff being no party to that suit, was of opinion that his present claim could not be affected by the previous case, and gave a decree in his favor, directing that he should obtain possession of Seedusseere's 4 gundahs share from the heirs of Rughonath and Radhanath, and Gopee Mohun, Mudun Mohun and Hurree Mohun, and the heirs of Bhoobun Mohun, or whatever might be ascertained, and the deficiency to be made up by Gunga Churn Sein, the successor of the original decree-holder, with mesne profits from the date of Seedusseere's death, and interest from the parties above mentioned, and also from Gunga Churn Sein, in the event of any land being found in his possession.

The appellant observed that, as the principal sudder ameen had himself decided that Seedusseere's 4 gundahs share was not included in the conditional mortgage, he was incompetent to pass a conditional order, and insisted upon the power of a Hindoo female to alienate her husband's property for the performance of his obsequies and the payment of his debts.

I concur with the principal sudder ameen as to Seedusseere's inability to transfer her husband's property, and confirm his order as regards the heirs of Radhanath and Rughoonath, and Gopee Mohun, Mudun Mohun and Hurree Mohun, and the heirs of Bhoobun Mohun. Although in the deed of transfer filed by the defendant, it is stated that it was executed by Seedusseere to pay her husband's debts, her simple acknowledgment is not sufficient, for the debts must be proved, and only that portion of the property, which is absolutely necessary, can be disposed of, and the price must be in proportion to the real value, *vide* the case of Hein Chand Mujoomdar, *versus* Taramunce and Race Munnee, S. D. A. Reports, vol. I., page 359.

As regards the appellant the conditional order passed by the principal sudder ameen is irregular, and cannot be enforced: independent of which it is clear that the decree obtained by Parbuttee Chowdrain, to which the appellant has succeeded, was for a 4 gundahs, 2 krants, 18 teels share, comprising the shares of Uprajecta and Mudun Mohun and Hurree Mohun Rae, and had nothing to do with Seedusseere's share.

The appeal is therefore decreed on this point, and the principal sudder ameen's order amended, and the respondent will defray the appellant's costs.

THE 9TH FEBRUARY 1850.

No. 30 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 8th March 1847.

Mudun Mohun Banorjea, Defendant, (Appellant,)

versus

Sheik Muneer, Plaintiff, (Respondent.)

THIS suit was instituted by the plaintiff as a pauper for possession of an 8 annas share of five under-tenures with mesne profits from the month of Assar 1246, laying his damages at 2,462 rupees, 8 annas. He represented that in talook Premnarain Rae, kharija pergunnah Ourungpore, kismut Mayoee, there were five hereditary tenures belonging to himself and his brother, Shumsooddeen—first, a howla called by his name; second, a howla called also after him; third, a neem ousut talook called Shumsooddeen; fourth, a neem howla called Shumsooddeen; fifth, an ousut talook called Wahiddooddeen: that although in the lifetime of their father their pottahs and other deeds had been destroyed by fire, they had procured fresh documents, and in a suit against Unund Mye, wife of Kishen Kunt Rae, for possession of those tenures, they obtained a decree for four of them, with permission to sue for the ousut talook Wahiddooddeen, of which they subsequently received possession by an amicable arrangement: that in consequence of the sale of the entire talook Premnarain Rae, he and his brother had been ejected from the month of Assar 1246, and as his brother had sued separately for his own share, he had preferred the present action for his own portion.

The reply of Mudun Mohun Banorjea was to the effect that as he obtained possession of his purchase through the ameen in the latter end of Sawun 1246, it was quite impossible for him to have dispossessed the plaintiff in Assar as alleged: that he was, moreover, an auction purchaser at a Government sale, and had the power, under the Regulations, to take possession of the tenures alluded to, which had been created subsequent to the decennial settlement, and whose anterior existence the plaintiff did not pretend to affirm: that as Kamlakaunt Buttacharj was in possession of a 4 annas share, he should have been included as defendant.

The plaintiff, in his replication, declared his claim was founded upon a right existing for six generations, for 200 years and more.

The defendant, in his rejoinder, alluded to the ages of the plaintiff and his elder brother being about 40 and 50, and ridiculed the idea of his documents being of such antiquity.

The principal sudder ameen was of opinion that the plaintiff had been dispossessed, and that, with reference to a decision of the Sudder Court, dated the 15th November 1839, an auction purchaser had no power summarily to cancel an under-tenure, and adverting to the

ousut talookdaree pottah in the case No. 3437, decided by Moulvee Ryazooddeen, on the 26th May 1832, being duly established, he gave a decree in plaintiff's favor with mesne profits.

The appellant argued that, although the respondent had sued as a pauper in this case, yet in a separate suit, No. 12, in consequence of its being proved that he had possession of the property for which he sued, his claim was dismissed, that the tenures of the respondent were all subsequent to the decennial settlement, and alluded to the privileges enjoyed by an auction purchaser at a Government sale.

The respondent referred to the decision of the Sudder Court, quoted by the principal sudder ameen, in support of his objection to the auction purchaser exercising the power of summary ejection.

With reference to the irregularity of the plaint as noticed by the appellant, it is unnecessary to give any opinion upon the objection urged by the respondent as to the power of an auction purchaser. As in a suit instituted by the respondent against Ruttun Kishen Rae, on the 5th July 1844, it was decided by a former judge on the 5th June 1846, that he had possession of the property which he claimed, this suit instituted by him as a pauper, and dated the 19th December 1845, cannot be admitted. I must therefore decree this appeal, reverse the principal sudder ameen's order, and nonsuit the plaintiff, who will pay the costs of both courts.

THE 13TH FEBRUARY 1850.

No. 31 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 11th March 1847.

W. Deridon, (Defendant,) Appellant,

versus

Jogyee Beebee, wife of Hazaree Naya, and Mussamut Adece Beebee, wife of Omeer Gazee, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiff and Adece Beebee to recover possession of an 8 annas share of a howla with mesne profits from the month of Jyete 1251; laying their damages at rupees 1,062, 4 annas, 9 pie: they represented that in pergunnah Buzurgoomedpoor, talooks Radhakist Rae, Haranund Rae and Calee Doss Sedunt, of which a 4 annas share belonged each to Calee Doss Rae and Goorooopersad Rae, and an 8 annas share to Radhakist Rae; there was a howla created by their ancestor Mahomed Haneef Naya Shikdar, prior to the decennial settlement, consisting of 53 beegahs, 11 cottahs of land, assessed at a jumma of 16 rupees Sicca: that after the death of Mahomed Haneef, Dhun Gazee, and after him Hazaree Naya, husband of Jogyee Beebee, and Omur Gazee, husband of Adece Beebee, were in possession: that the 8 annas share of Radhakist Rae being sold for arrears of revenue on the 29th March 1844, corres-

ponding with the 17th Chyte 1250, it was purchased by Mr. Bereiro and re-sold by him to Mr. Deridon, who forcibly ejected them from their tenure created prior to the decennial settlement, in support of which fact they possessed decisions of the civil court and other documents.

Mr. Deridon denied the ejectment, and alluded to his having bought the 8 annas share of talook Radhakist Rae from Mr. Bereiro, who had purchased it at a Government sale: that Mr. Bereiro's agents having issued a notice to the plaintiffs, and Munohur Gazee who were in possession of some land under the plea of its being Mahomed Haneeff's howla, Moonshee Naya and Zumceer Naya, on the part of the plaintiffs, and Munohur Gazee, on his own account, attended his (defendant's) naib, and though at first they attempted to obtain a settlement at a jumma of 40 rupees, no arrangement was effected with Munohur Gazee, for himself and the plaintiffs, at a jumma of 50 rupees, and he gave an agreement, dated the 8th Maugh 1251, to the effect that he would pay whatever might be ascertained hereafter from the result of a measurement: that as his (defendant's) servants were about to commence the measurement, Munohur Gazee had preferred this suit through the plaintiffs: he denied the permanency of the jumma of the howla, and as it was a junglebooree tenure there could be no fixed jumma, and quoted the case of Hurnath Ghosal, decided by the Sudder Court, in support of his declaration, and insisted upon his power as an auction purchaser to cancel the tenure of the plaintiffs.

Munohur Gazee supported the statement of the auction purchaser, relative to the kubooleut which had been filed.

The plaintiffs, in their replication, denied the issue of the notice, or the attendance of Moonshee Naya on their behalf: they contended that Munohur Gazee had no sort of right in the howla, and therefore had no authority to make any arrangement, and his claim in the howla had already been dismissed by the sudder ameen in 1815, and again by the judge in appeal in 1817.

The principal sudder ameen, considering that Mahomed Haneeff's right in the howla had been satisfactorily established by a decree of court, dated the 6th September 1815, to the absolute exclusion of Munohur Gazee, and that the ejectment of the plaintiffs in the month of Jyte 1251, was clearly proved, and referring to a decision of the Sudder Court, dated the 15th November 1839, by which an auction purchaser could not summarily cancel an under-tenure, he decreed in favor of the plaintiffs, with mesne profits and costs against Mr. Deridon and Munohur Gazee.

The objections of the appellant, and the respondent were merely a repetition of their plaint and answer.

I agree with the principal sudder ameen with reference to Munohur Gazee's right in the howla having been rejected by a decree of court; but the decision of the 15th November 1839, quoted, had, in my opinion, more particular reference to a case in which summary pos-

session had been given to an auction purchaser by the civil court. This case should, I conceive, be decided under the provisions of Section 26, Act I. 1845, and the principal sudder ameen should have ascertained whether the tenure of the respondents was included in the exceptions there noticed. As the enquiry is defective, I decree the appeal, reverse the principal sudder ameen's order, and remand the case to that officer with reference to the foregoing observations; and the amount of stamp paper on which the appeal is engrossed will be refunded to the appellant.

THE 16TH FEBRUARY 1850.

No. 42 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 20th April 1847.

Gungadhur Turkolunkar and Goureenat Sreemunee and Wukeel Chunder Butturchage, and Ramrutten Bidyalunkar, and Ram Churun Chuckurbutee, Manik Chunder Gungopuddea, and Rajkishore Sein, and Peteraber Sein, and Chunder Kishore Sein, and Sreemuttee Urnopoorana, wife of Nitand, deceased, mother of Hurrenarain Sein, minor, and Seeremunnee, wife of Chunder Seekur Sha, deceased, mother of Gour Soonder Sha, minor, objectors, Appellants,

Shama Soondree, wife of Radhachurun Sein, deceased, guardian of Radhabullub Sein, and Hursoondree, wife of Brijkishore Sein, (Plaintiffs,) and Gourgopal Ghose and Radhachurun Ghose, sons of Lukheerain Ghose, deceased, (Defendants.) Respondents.

THE plaintiffs instituted this suit to fix a jumma of Company's rupees 759-7-5-12, upon beegahs 2,848 of land, at the rate of 4 annas Sicca per beegah, and to obtain a kubooleut for the same, and the payment of the annual jumma according to its terms: they represented that in pergunnah Sydpore, joar Dadcallee, there was a talook called Bindrabun Chunder Sein and Caleegunga Dutt, of which an 8 annas share, was recorded in the name of Caleegunga Dutt, and the other half share in that of Bindrabun Chunder Sein, the shares and the jumma being quite distinct: that the 8 annas share of Bindrabun Chunder Sein being subdivided, one-half was the property of Radhamadub Sein, the father-in-law of Shama Soondree, and the other half the property of Rajkishore Sein, father-in-law of Hursoondree: after the death of Rajkishore, Hursoondree was in possession of his share by virtue of a deed of transfer from her husband, Brijkishore Sein and Shama Soondree, after the death of her father-in-law and husband, was in possession of the other share as guardian of the minor: that in connection with the

8 annas share called talook Bindrabun Chunder Sein, in mouzah Teekeccotta, Lukheenarain Ghose, father of the defendants on the 25th Chyte 1209, received an ousut talookdaree pottah from Radhamadub, and Rajkishore Sein, and gave a kubooleut in return for some jungle land according to boundaries described in the plaint, to the purport that for the land which was cultivated, after deductions for dewutter, cheraghee, and other items, he would pay at the rate of 4 annas per beegah; that accordingly he cultivated the land, and after him his sons, the defendants, and paid rent without any definitive assessment: that after a quantity of land had been brought into cultivation, Gourgopal Ghose being the manager of affairs had the land measured in 1237, and concealing some of it, and making deductions from 2,540 beegahs, 4 cottahs, 10 dools, on account of inchetran, and other reasons, gave a kubooleut and kistbundee separately to Shamasoondree and Hursoondree, to the effect that he would pay for 1237, the sum of rupees 200-10-7: for 1238 rupees 228-2-4-2, and for 1239 the same amount, and for 1240, the full jumma rupees 297-8, and so on at that rate: that in 1243, some of the rent remaining unpaid, in Hursoondree and Shama Soondree's husband, Radhachurn Sein, instituted a suit in the civil court and gained a decree on the 3rd August 1838: that the defendants having appealed to the Sudder Court, on the grounds of the kubooleut and kistbundee being taken by violent means, the Court, upon the strength of those objections reversed the decision of the zillah court, and in consequence of a petition from Hursoondree and Radhachurn Sein for a review of judgment, the Court decided that there was no impediment to their (plaintiffs') suing to fix the jumma: that accordingly under Regulation V. of 1812, after deducting 40 beegahs, 18 cottahs, 5 dools of land on account of dewutter and other items, they issued a notice upon the defendants, fixing a jumma of rupees 759-7-5-12, upon 2,848 beegahs of land at the rate of 4 annas per beegah: that although the defendants had given two separate kubooleuts and kistbundeas, and a suit had been instituted for the recovery of the rent in that form, yet as those kubooleuts and kistbundeas had been rejected by the Sudder Court, and the collections were made ijmalee, and the father of the defendants had given one kubooleut, the plaintiffs had preferred one suit upon the strength of that document.

Gourgopal Ghose and Radhachurn Ghose declared the boundary of the land as stated by the plaintiffs was incorrect, and observed that the ousut talook was established by a pottah of Radhamadub Sein and Rajkishore Sein, dated the 10th Bysak 1209, and the jumma up to 1233, was Sicca rupees 23-4, namely, rupees 11-10, to each share: that when the zemindary was attached by the collector in 1234, he increased the jumma by rupees 1-12, and took from them Sicca rupees 25, up to 1235, and after the estate was released from attachment they paid at that rate to Radhamadub

Baboo, and to Hursoondree: that in 1243, they (defendants) were sued for rent under Regulation VII. of 1799, at a declared jumma of rupees 595, altogether, and having filed their proofs in support of their payment of Sicca rupees 25, the suit was dismissed with permission to the plaintiffs to sue in court regarding the jumma: that in 1244 Hursoondree and Radhachurn Sein sued them for arrears of rent at an increased assessment and gained a decree from the zillah court, which was reversed by the Sudder Dewanny: that the measurement had been made in the absence of the parties concerned, nor were they aware of the issuing of the notice: that the plaintiffs had formerly alluded to two kubooleuts, dated the 25th Chyte, and now mentioned one pottah and one kubooleut, but these documents were in reality dated the 10th Bysak, as would be evident upon inspection.

The plaintiffs, in their replication, after repeating their former pleas, insisted upon the pottah, dated the 25th Chyte 1209, being the correct one, and although two kubooleuts for the two shares were at first mentioned, this error was subsequently corrected, and the fact of one kubooleut duly recorded.

The defendants, in their rejoinder, observed that, as the collector during the period of attachment was in the place of the zemindar, it would be seen from his dakhilas that the jumma was fixed, and quoted Sections 9 and 10, Regulation V. of 1812, in support of their objections to the notice, and, as the shares were distinct, and the rent and receipts separately paid and received, and the plaintiffs had themselves before sued them (defendants) for rent in that manner, the present plaint was incorrect.

Gungadhur Turkolunkar and several others disputed the correctness of the boundaries described by the plaintiffs, and declared that half of it was connected with talook Calleeegunga Dutt, in which was their ousut talook, any interference with which on the part of the plaintiffs they were desirous of opposing.

Mohun Chunder Sein gave a petition to the purport that he had a hewla in the ousut talook of the defendants, and complained of the land being subjected to measurement on the part of the talookdars.

Callee Mohun Dutt gave a petition supporting the objections of Gungadhur Turkolunkar and others, which objections were refuted by the plaintiffs, in a petition, stating that the parents of some of the objectors had themselves cultivated the land in question as howladars.

The principal sudder ameen on a former occasion nonsuited the case, because he considered the plaint undervalued, but it was remanded by a former judge with directions to receive a supplementary plaint. In the plaint thus filed the amount of land measured was stated to be 5,802 beegahs, 14 cottahs, 9 dools, and the jumma thereon Company's rupees 1,355, 6 annas, 11 pies, 3 krants.

The principal sudder ameen decided, with reference to the pottah, dated the 10th Bysak 1209, received by the father of the defendants from the fathers-in-law of the plaintiffs, that a jumma was fairly assessable upon the land at the rate of 4 annas per beegah, and although from the measurement of the ameen 5,082 beegahs, $17\frac{1}{2}$ cottahs of land were ascertained by a rod of $5\frac{1}{2}$ cubits, yet with reference to a proceeding of the Sudder Court, dated the 2nd November 1846, he considered the rod of 7 cubits, 7 fingers to be the correct standard, which would give 2,859 beegahs, 2 biswas, 10 dools of cultivated land in the possession of the defendants, the jumma of which at the rate of 4 annas per beegah would be Company's rupees 762, 6 annas, 11 pies, 3 krants, and being of opinion that the notice had been properly issued under Regulation V. of 1812, and discrediting the documentary evidence adduced by Gungadhur Turkolunkar and others, whose objections, moreover, should form the ground of a separate suit, he gave a decree in favor of the plaintiffs for the sum abovementioned from the date of his order quoting a proceeding of the Sudder Court, dated the 2nd August 1837, and costs and interest against the defendants with the understanding that the objectors, who were to pay their own costs, were not affected by this decree, in any interest they might be found to possess.

The appellants repeated their objections to the boundary described by the respondents (plaintiffs,) and alluded to the measurement papers of Neelmunny Banorjea, ameen, proving the land to the west of the Burra Singa Nuddee as being cultivated by them and being their ousut talook of which they were in possession, and also that another ameen, Sadut Hosein, noticed their objections in the margin of his chitta: they further contended that neither the respondents (plaintiffs) nor the defendants could prove that the entire land in the boundary described by the plaintiffs belonged to talook Bindrabun Chunder Sein, and quoted a decision of the civil court, dated the 4th December 1832, to shew that half of the mouzahs Duddeebhunga and Doodcallee, belonged to talook Calleegunga Dutt, and if the plaintiffs had any right to the west of the Burra Singa Nuddee, they would have mentioned it in their notice, and not have confined their claim, as inserted in their plaint, to the eastward of the nuddee.

It appears that no documents were produced by Gungadhur Turkolunkar and others in the first instance, not until the case had been remanded to the principal sudder ameen, and no claim seems either to have been preferred at first by any one on the part of the talookdar, Calleegunga Dutt or his heirs. Without therefore recording any opinion upon the validity or otherwise of the documentary evidence adduced by the appellants in this case, it is sufficient to observe that, as the principal sudder ameen has distinctly intimated that his order will not injure any right they may be found to pos-

sess, I see no reason to interfere with his decision, which is hereby confirmed, and the appeal dismissed, with costs.

THE 16TH FEBRUARY 1850.

No. 43 of 1847.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 26th April 1847.

Shama Soondry, wife of Radha Churun Sein and Sreemutttee Hursoondree, wife of Brij Kishore Sein, (Plaintiffs,) Appellants,

versus

Gourgopal Ghose and Radha Churun Ghose, sons of Lukhee Narain Ghose, deceased, (Defendants,) Respondents.

THIS case is connected with the previous case No. 42, and the appeal is preferred upon two grounds: first, that the principal sudder ameen awarded a jumma upon land measured with a rod of 7 cubits and 7 fingers instead of $5\frac{1}{2}$ cubits, and secondly, directed the payment of the jumma from the date of his decree instead of, from the date of the issue of the notice: they impugned also the accuracy of the pottah, dated the 10th Bysak 1209, of which only a copy had been produced, and insisted upon the pottah and kuboolent, dated the 25th Chyte 1209, being the true and correct documents of which the original kuboolent was filed in this case.

The respondents, alleging their inability to appeal in time in consequence of indisposition, presented a petition complaining of the illegality of the notice which was issued at the tnhiseel cutcherry, and in their absence and not at their residence as required by law, and although this point was not urged for the reasons stated as a ground of appeal, yet the appellate court could of itself notice any illegality, and quoted the case of Gujputt Rae, appellants, and Degumbur Shahee, respondent, decided by the Sudder Court on the 17th June 1848: they further observed that the claim of the appellants was opposed to the principle explained by the Sudder Court on the 15th April 1848, in the case of Setaram Mehtoon *versus* Derchand Lall.

According to a decision of the Sudder Court, dated the 14th August 1843, in the case of Roop Chunder Sha, appellant, *versus* Ranees Kuttanee, the jumma is claimable by the appellants from the date of the issue of the notice, and in the case of Hursoondree *versus* Joynarain Ghose and others, a parallel case to this, the rod of $5\frac{1}{2}$ cubits was expressly authorised, so that the claim of the appellants on these two points is good. With reference, however, to Section 9, Regulation V. of 1812, the jumma demandable must be specified, and this question has been already ruled in the case of Taramunnee Chowdram, plaintiff, *versus* Gour Kishore Nag and others, defendants, decided on the 10th June 1847, and in the case of Sobhnath Misser and others, appellants, *versus* Geinda Lall and

Jhoomuk Lall, vol. VII., Sudder Dwanny Adawlut Reports, page 156. In the notice issued by the appellants the jumma was stated to be Company's rupees 759, annas 7, pies 5, krants 12, and in the supplementary plaint the jumma is recorded as Company's rupees 1,355, annas 6, pies 11, krants 3, so that the real amount demandable was not specified in the notice as required by law and the precedents quoted. Again by Section 10 of the Regulation abovementioned, the notice must be issued at the dwelling place of the parties concerned, but in this case it was issued at the tuhseel cutcherry; and though the appellants have observed that it was issued in a similar manner in the case of Hursoondree *versus* Joynarain Ghose, yet in that instance the defendants were said to be residents at the tuhseel cutcherry, and were *present* when the notice was issued: in this case, the defendants were stated to be residents of Gabha, and at the time the notice was issued at the tuhseel cutcherry they were not *there*. It must also be noticed that the claim of the appellants for a kuboolent is irregular, and opposed to the principle explained by the Court on the date above mentioned by the respondents. Under these circumstances I must reverse the principal sudder ameen's decision, dismiss the appeal, and nonsuit the appellants, with costs.

THE 18TH FEBRUARY 1850.

No. 40 of 1847.

Appeal from the decision of Moulvée Mahomed Kulleem, Principal Sudder Ameen, dated the 22nd April 1847.

Chunder Kishore Chatterjea, Sumboo Chunder Dutt, and Bishnat Bose, Defendants, (Appellants,)

versus

Kishen Mohun Rae, and Hursoondree, wife of Unund Chunder Rae, deceased, mother and guardian of Kalee Churn Rae, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs to reverse a summary decision, and sale in pursuance thereof, and obtain possession of their talook, with mesne profits from the 3rd Phalgun 1251; laying their damages at Company's rupees 487, 7 annas, 4 pie. They represented that in the 8 annas, 12 gundahs, 2 cowrees, 2 krants share of per-gunnah Chunder Deep, in chakla Bhogpoor and other chaklas, there was a talook written under the name of "zimma," and called after their ancestor, Lukhee Kunt Rae, at a jumma of Sicca rupees 189, 4 annas, 10 gundahs: that after the death of their father and during their minority, the zemindar separated a jumma of rupees 22, 8 annas, 9 gundahs, and united it with zimmas Doerga Ram Dutt and Golamee Mirdah, contrary to their wishes, and recorded the

remaining jumma at rupees 166, 12 annas; that the zemindar had sued them under Regulation VII, of 1799, sometimes mentioning the name of Unund Chunder, and sometimes including his minor brother and gained decrees against them, and again the surburakar, having realized the rent up to the month of Bhadoon 1251, had through the collusion of the zemindar sued Unund Chunder by name, and his brother without naming him, for the sum of rupees 22, 5 annas, 4 pies, principal and interest for the kists of Assin and Kartik, and without issuing the dustuk and notice at their place of residence, and, filing two false receipts, gained a decree against them, on the 14th January 1845, for rupees 27, 7 annas, 4 pies, including interest and costs, to realize which their talook was sold, and purchased by the agent of the defendants, Nund Coomar Doss, for 360 rupees, on 3rd Phalgun 1251, and again sold to Sumboo Chunder Dutt, Kishen Mohun Oopuddea, and Bishnat Buxee: that the summary plaint was irregular, inasmuch as both brothers were in possession, and only one was sued, and in the beginning of the plaint where Unund Chunder and his brother are mentioned as defendants, only one defendant is afterwards alluded to; and in the summary decision first one defendant is mentioned, and then the plural number resorted to, and the jumma had been written as rupees 177, 13 annas, 2 pies, 8 krants, instead of rupees 177, 13 annas, 10 pies, 8 krants, and, notwithstanding a supplementary plaint had been given to correct the error, the decree had been given in accordance with the jumma first stated: that two false receipts had been filed to attest the serving of the dustuk and notice in the names of Monabdee chowkeedar and Issur Chunder Dass, of Nouruttenpore, and Buxee Khan of Bagpore, but there were no such persons as Monabdee chowkeedar and Issur Chunder Dass in Nouruttunpore, and the place where Buxee Khan resided was about 6 ghurrees distance from their village: that the writing of the two receipts and the signature were all in one handwriting, and notwithstanding the absence of a kistbundee the interest had been calculated before the expiration of the year.

Chunder Kishore, Sumboonat, and Bishnat replied that they had purchased the talook from Nund Coomar Dass on their own account: that the summary plaint had been written precisely in the same manner as former plaints for which decrees had been obtained, and to which no objections had been preferred: that as the decree had been given in accordance with the corrected plaint; that decree and sale could not be considered irregular: that the dustuk and notice were properly issued, and Monabdee and Issur Chunder Dass and Buxee Khan, whose residence was close to that of the plaintiffs, were witnesses to the serving of them, and though in one receipt Buxee Khan and in another Buksee Khan, were mentioned, the name was pronounced in both ways, and the interest had been calculated according to former custom.

The plaintiffs, in their replication, repeated their former pleas and observed that a supplementary plaint could not be given in a summary suit without orders.

The defendants, in their rejoinder, quoted Section 6, Regulation VIII. 1831, and insisted upon their right to give a supplementary plaint under Section 26, Regulation VII. of 1822, and Section 7, Regulation XIV. 1824.

Parbuttee Chowdrain and others supported the accuracy of the summary plaint, the decree, and sale.

In their replication to this answer, the plaintiffs declared that Deeanut Oollah was the chowkeedar at their village and had been so for ten years; that no witnesses to the receipt had been produced, and the evidence of those which had been adduced was contradictory.

The plaintiffs filed a supplementary plaint to shew the illegality of the sale, which took place before the expiration of ten full days from the issuing of the notice, as required by Regulation VIII. of 1835, in refutation of which the defendants declared that the signature of the Government pleader was dated the 3rd February, which would give ten days before the 13th February, the day of sale, and they remarked upon the plaintiffs' having omitted to include Manik Malla, wife of Gobind Chunder, in their suit.

The principal sudder ameen considered that, from the absence of the evidence of the witnesses to the receipt of the notice, and the want of credibility in the testimony of those which had been adduced, the summary decision could not be upheld, and as the notice of sale appeared to have reached the Government pleader on the 3rd February, after cutcherry hours, and the order of the judge was dated the 4th February, and the sale took place before the expiration of ten full days from that date, it was illegal and opposed to Regulation VIII. of 1835; and considering further that the calculation of interest by the surburakar before the close of the year in the absence of a kistbundee was incorrect, he reversed the summary decision, dated the 14th January 1845, and the sale in pursuance thereof, dated the 13th February 1845, and decreed possession to the plaintiffs with mesne profits and interest against Nund Coomar Dass, Chunder Kishore Chatterjee, Sumboo Chunder Dutt, and Bishnat Bose, and costs against the surburakar and Nund Coomar and the second purchasers.

The objections of the appellants were a repetition of their former pleas: they remarked in addition that the objection of the respondents to the sale on the score of illegality had been preferred one year after the sale, and six weeks after the institution of the suit.

The respondents observed that Manik Malla's name was not mentioned in the summary plaint filed by the surburakar, nor in the decision, and that Gopal Kishen had been installed in the place of his mother, Sondeea Chowdrain, by an order of court, dated the

17th May 1844, corresponding with the 5th Jyte 1251, nor could the appellants prove that Manik Malla's name was recorded prior to the institution of this suit. The appellants, in a petition, observed that the plaint had been undervalued, inasmuch as the mesne profits for three months had been estimated at rupees 100, which would make the value of the land not less than rupees 3,000, instead of 360 as stated: that although this error had not been notified in the court below, yet, under Construction 1046, the appellate court could take cognizance of the illegality, and quoted the case of D. H. Kearns on the part of Thomas Tweedie, petitioner, decided by the Sudder Court on the 2nd October 1847: they observed further that Tiloke Chunder Ghose, who had received some of the sale proceeds, had not been made a defendant, nor had the principal sudder ameen specified how or from whom the auction purchaser was to receive his purchase money.

I concur with the principal sudder ameen in his reasons for reversing the summary decision and the sale, and as the appellants have not been able to shew that Manik Malla's name was recorded at the time this action was preferred, I can see no irregularity in the omission of her name in the plaint: the objections regarding Tiloke Chunder not being included as a defendant, and the omission to specify how or from whom the auction purchaser was to receive his purchase money, were not pleaded in the grounds of appeal, besides which Tiloke Chunder had nothing to do with the sale, and the original auction purchaser has been silent on this point: the case too of Thomas Tweedie, cited by the appellants to shew the undervaluation of the plaint, is not exactly in point, for in that case the plaintiff in a suit for possession specified the yearly value of the land, and with reference to it made too low a calculation of its selling price: in this case the plaintiffs laid their action at the amount for which the land was actually sold, including collections for three months without deducting the usual charges; but at all events, according to the Court's Circular Order of the 20th August 1841, No. 161, and the case of Syud Shah Mohamed Yassin, appellant, *versus* Syud Enayut Hossein and others, respondents, decided by the Court on the 17th December 1846, this objection cannot be admitted at this time. The order therefore of the principal sudder ameen is confirmed, and the appeal dismissed, with costs.

THE 21ST FEBRUARY 1850.

No. 58 of 1849.

Appeal from the decision of Gobind Chunder Bidyarutten, Moonsiff of Cowcally, dated the 16th April 1849.

Gour Gopal Ghose and Radachurn Ghose, (Plaintiffs,) Appellants,
versus

Hurrees Chunder Bhuttacharj and Roy Kishore Sein, (Defendants,) Respondents.

THIS suit was instituted by the plaintiffs to reverse a summary decision of the collector and deputy collector, given in favor of Hurrees Chunder Bhuttacharj, a farmer, for the rent of an ousut talook, called Hurree Kishen Sein, which the plaintiffs declared was not an ousut talook, but a howla, and situated in their own ousut talook in mouza Teekeekatta, talook Bindrabun Chunder Sein.

The reply of the defendants, Rajkishore Sein, Petumber Sein, Kaleekishore Sein, and Chunder Kishore Sein, was to the effect that the ousut talook alluded to was in talook Kaleegunga Dutt, to which, as well as talook Bindrabun Chunder Sein, mouzah Teekeekatta appertained, and they referred to a decree for a kubooleut, which had been given against the plaintiffs on the 29th November 1845.

The replication of the plaintiffs consisted of a repetition of their former statement, and a denial of mouzah Teekeekatta having any connection with talook Kaleegunga Dutt.

The moonsiff based his decision upon a former decree, which he had given for a kubooleut against the plaintiffs, and, not considering it necessary to enter upon the question of the connection of mouzah Teekeekatta with talook Kaleegunga Dutt, or otherwise, he dismissed the claim of the plaintiffs.

The appellants reiterated their objections, and referred to a regular suit brought by the talookdars of Bindrabun Chunder Sein to fix the assessment upon their ousut talook, on which occasion the objections of the present respondents and others regarding mouzah Teekeekatta belonging partly to talook Kaleegunga Dutt, were overruled by the principal sudder ameen, and a decree given in favor of the talookdars abovementioned against them, appellants. The case alluded to, No. 42, was disposed of by this court on the 16th instant, and the pleas there urged by the present appellants and respondents were precisely the same as in this suit: the principal sudder ameen rejected the objections of the respondents, who claimed part of Teekeekatta as belonging to talook Kaleegunga Dutt, considered their documentary evidence suspicious, and gave a decree in favor of the heirs of the talookdars of Bindrabun Chunder Sein, against the present appellants without injury to the rights of the objectors if in existence. As the objectors, amongst whom were the present respondents, did not produce the slightest documentary evidence until some time after that suit had been pending, not, in fact, until it had been

remanded to the principal sudder ameen, and as his order did not affect in any way any right they might actually possess, his decision was confirmed.

It appears that the summary decision of the deputy collector and collector was *ex parte*, and founded upon a decree of the moonsiff which he had given for a kubooleut, which decree was, in fact, irregular: it appears further that from the date of a suit for rent brought by the heirs of the talookdars of Bindrabun Chunder Sein against the present appellants, and which case was appealed to the Sudder Court, more than six years elapsed before the objections of the respondents and others were thought of: with reference therefore to the case No. 42, disposed of on the 16th instant, and at present the presumptive evidence being in favor of the objections of the appellants, I decree the appeal, reverse the moonsiff's order, and the summary decisions of the deputy collector and collector, dated the 17th September and 9th December 1847, and the respondents will pay the costs of both courts.

THE 21ST FEBRUARY 1850.

No. 59 of 1849.

Appeal from the decision of Gobind Chunder Bidyarutten, Moonsiff of Cowcally, dated the 16th April 1849.

Gour Gopal Ghose and Radachurn Ghose, (Plaintiffs,) Appellants,
versus

Hurrees Chunder Bhattacharj and others, (Defendants,) Respondents.

THIS case is precisely similar to the preceding case No. 58, the only difference being that the summary suit was brought against another sharer of the same land, and an admission of the claim was filed.

The same order is therefore applicable, the appeal is decreed, the moonsiff's order reversed, as well as the summary decision of the deputy collector and collector, dated the 17th September and 9th December 1847, and the respondents will pay the costs of both courts.

ZILLAH BEERBHOOM.

PRESENT: F. CARDEW, ESQ., JUDGE.

THE 7TH FEBRUARY 1850.

Case No. 9 of 1849.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, December 16th, 1848.

Rampurshad Mittr and Durpnurayan Mahato, (Plaintiffs,
Appellants,

versus

Benec Madub Raee, Kylasnath Raee, Indurnurayan Raee, Buddun Chund Singh, Kaleepurshad Singh, Kaseenath Oopudya, and Lutubur Ghose, (Defendants,) Respondents.

THIS suit was instituted by the plaintiffs (appellants,) as the putnee talookdars of talook Hookumapore, on the 8th September 1847, corresponding with the 24th Bhadro 1254 B. S., to recover damages, under Clause 8, Section 15, Regulation VII. 1799, for opposition to them in the measurement and assessment of mouzahs Nuguree and Bhurgram.

The damages were assessed at Company's rupees 1,574-6-8, being the excess of rent for the year 1253 B. S., which the plaintiffs would have been entitled to, had the measurement and consequent assessment been effected, and also the wages of the measuring ameen, as per the following detail :

Estimated assessment for 1253 of mouzah Nuguree, Rs.	1,200 0 0
„ mouzah Bhurgram, „	850 0 0

2,050 0 0

Amount of rent realized in 1253— .

Mouzah Nuguree,	216 0 4
„ Bhurgram,	329 9 0

545 9 4

Excess,.....	1,504 6 8
Wages of the ameen from Phalagoon 1252 to Bhadro 1253,	70 0 0

Total Rupees,..... 1,574 6 8

The substance of the petition of plaint is, that the plaintiffs having purchased the putnee tenure of talook Hookumapore, without procuring the zemindaree accounts, an ameen was deputed by them in the month of Phalgun 1252, to measure the entire estate: that the defendants would not attend the measurement themselves, and instigated the whole of the ryots of mouzahs. Nuguree and Bhurgram to conspire together, to prevent its taking place, assuring them that they would not have to pay rent according to measurement, and after repeatedly opposing the ameen, they at last snatched away and carried off the measuring rope; that the plaintiffs were thus unable to issue the notice prescribed by Section 9, Regulation V. 1812, without which an assessment could not be effected, and had sustained loss in consequence to the extent exhibited above.

In a supplemental plaint, the plaintiffs stated that the ameen was detained seven months in the mofussil, owing to the defendants' opposition; that on the 27th Bhadro 1253, they sent an ameen to measure mouzah Nuguree, and the defendants opposed him through their servants and snatched away the rope, and on the 29th Bhadro, they opposed the ameen in the same way at mouzah Bhurgram.

The defendants, in answer, pleaded not guilty, stating that they made no opposition whatever to the measurement, and had no part in counselling the ryots to prevent its taking place; that they held lands in other mouzahs, the measurement of which had been effected by the plaintiffs without opposition, and it was therefore unlikely they would have opposed the measurement of the two mouzahs specified in the plaint.

The principal sudder ameen dismissed the suit, with costs, on the main ground that the evidence of the witnesses examined on the plaintiff's part was contradictory.

On perusal of the evidence, I find that no direct proof has been adduced of any opposition on the part of the defendants to the ameen's proceedings, prior to the dates set forth in the supplemental plaint; but that the measurement of the two mouzahs was opposed on those dates, there appears to me no manner of doubt; the opposition then given, however, constituted two separate causes of action for not only the time and place, but the measuring party and the opponents were all different, not one of the defendants is stated by the witnesses to have been present on both occasions, and on this account the suit in its present shape, taking the occurrences of those dates as the foundation of the complaint, would be irregular. Again, as no opposition on the part of the defendants prior to the month of Jeth 1253, on or before which month alone notices can be issued to the ryots under Section 9, Regulation V. 1812, is proved, the claim for an excess of rent for that year is untenable. I am of opinion, therefore, that the complaint must be dismissed; but as there are strong grounds for suspicion arising from the evidence, though there is no direct proof on the point, that the defendants were concerned

in opposing the measurement from the very first, and there is no doubt that they opposed one or other of the ameens in the month of Bhadro, I cannot allow them their costs. I therefore amend the principal sudder ameen's decision, by directing that the costs of his court be charged to each party respectively, and I pass a similar order in respect to the costs in this court.

THE 15TH FEBRUARY 1850.

Case No. 47 of 1849.

Regular Appeal from a decision passed by the Moonsiff of Kytha, Wujee-ooddeen Mahomed, February 24th, 1849.

Boondya Bruhmunya and Rughoonath Singh, (Defendants,) Appellants,

versus

Sreedhur De, (Plaintiff,) Respondent.

THIS suit was instituted on the 22nd January 1848, corresponding with the 10th Maugh 1254 B. S., to recover possession of a 7 annas and 10 gundahs share of kismut Birore, with mesne profits from 1246 at the rate of rupees 13-7-10 per annum. The plaint was valued at Company's rupees 295-7-6.

The disputed kismut appears to have formed a portion of an estate, comprising mouzah Jajeegram and other mouzahs, which was divided amongst the shareholders, Susteeram Singh, Kalee Sunkur Singh, Ramkulyan Singh and others, previously to the decennial settlement, since which period the several divisions have been respectively called after the names of the original shareholders.

The plaintiff, who is the proprietor of the share formerly held by

* Kismuts Jajeegram,
Gugunpore,
Biroree,
Lukheekanth-batee,
Chytunpore,
Idrakpore, and
Gopalnugur.

Susteeram Singh, states that it comprised the kismuts noted in the margin,* and was sold some years ago for arrears of Government revenue and purchased by Rasbeharee Das, that it was again sold for arrears of Government revenue on the 24th April 1838, corresponding with the 23rd Bysakh 1245 B. S., and pur-

chased by Seetabchund Dogur, from whom he (plaintiff) acquired it by private sale, under date the 10th Agrahon 1245. That by the partition made between the original shareholders, the lands of all the kismuts were defined, under separate allotments, with the exception to kismut Biroree, comprising beegahs 20-1-10, which was allotted to Susteeram Singh and Kalee Sunkur Singh, jointly, in the proportions of 7 annas, 10 gundahs share to the former, and 8 annas, 10 gundahs to the latter, and each of them collected the rents from the ryots separately according to their respective shares; that Rasbeharee Das, and Seetabchund Dogur, and he (plaintiff) himself col-

lected the rents in succession in the same manner, up to the month of Agrahon 1246, when he was ousted by the defendants Boondya Bruhmunya and Rughoonath Singh (appellants,) who had previously acquired Kalee Sunkur Singh's share of the estate.

The defendants (appellants,) in answer, denied the allotment of the disputed kismut Bioree as set forth by the plaintiff, and pleaded, that the claim was barred by the statute of limitations; that Susteeram Singh's share of mouzah Jajeegram, &c., was originally purchased by Brijmohun Dás, in *beenamee* in the name of Rasbeharee Das, in the year 1241 B. S., which date was suppressed in the plaint; that they (defendants) acquired a 10 annas, 13 gundahs, 1 cowree and 1 krant share of Kalee Sunkur Singh's original share of the estate, comprising the seventeen kismuts noted in the margin,* in the month of Phalagoon 1240, and the

* Kismuts Jajeegram, Gugunpore, Idrakpore, Hydurnugur, Chytunpore, Rughoonathpore, Lukbeekanth-batee, Bullubhpore, with Shampore, Bioree, Ruttenath-batee, Koosceepoora, Bhaskurpara, Seebchundpore, Daug alias Goureepore, Hurishya-batee, Soondurnath and Bikoorpara.

remaining 5 annas, 6 gundahs, 2 cowries and 2 krants share in the month of Jeth 1243 B. S., and neither the plaintiff nor his predecessors ever had possession of the

share of the disputed kismut now claimed.

The plaintiffs, in their reply, maintained their right to the share claimed, and denied that the suit was barred by the statute of limitations.

The moonsiff, after deputing an ameen to make a local enquiry, of whose report, however, he took no notice, rejected the defendant's pleas, and gave a decree to the plaintiff. The grounds of his decision are, that in the *rukba bundees*, or statements of assets, of 1201 B. S., agreeably to which the decennial settlement was formed, the name of kismut Bioree is inserted both under the plaintiff's and the defendants' divisions of the original estate, but without any specification of shares; that the witnesses examined on the part of the plaintiff, all of whom are inhabitants and ryots of Bioree, state positively that the disputed kismut was formerly in possession of Susteeram Singh, of the auction purchasers and of plaintiff himself in succession, and two of the witnesses produced pottahs and receipts for rent in confirmation of their testimony; that the witnesses examined on the part of the defendants were none of them inhabitants and ryots of Bioree, and therefore their evidence was not entitled to the same degree of credit as that of the plaintiff's witnesses; that in a *jumma-bundee* account for the year 1228 B. S., filed by the defendants themselves in another suit, several parcels of land are entered as belonging to Susteeram Singh and Kalee Sunkur Singh jointly, and in making account, the apportionment of the jumma entered under those two names was found to be in the proportion of 7 annas, 10 gundahs, and 8 annas, 10 gundahs, with some exceptions more or less: this at least showed that Susteeram and Kalee Sunkur

Singh were joint shareholders in the property, and the defendants could produce no *butwara* (partition) or other papers to prove the contrary; that moreover, in a statement delivered in on the defendants' part in a case instituted in the magistrate's court, under Act IV. of 1840, it was said that the tank, the then subject of dispute, was the property of the former zemindars, Susteeram Singh and Gungapurshad Singh, (a successor of Kalee Sunkur Singh) and that defendants had acquired Gunga Purshad Singh's share, 8 annas, 10 gundahs by auction purchase, and this statement was now acknowledged by the defendants, with the reservation that it was filed by their mookhtar by mistake.

This decision cannot be upheld in my opinion.

The plaintiff in the first place has produced no document to show that kismut Biroree was originally divided between Susteeram Singh and Kalee Sunkur Singh in the proportions stated. The *jumma-bundee* papers referred to by the moonsiff as having been filed by the defendants in another suit, and the statement made in the case under Act IV. of 1840, are to no purpose, for they do not relate to kismut Biroree, but to kismut Jueegram, and thus, save that the name of Biroree appears in the detail of the assets of both portions of the original estate, the claim to 7 annas, 10 gundahs share of the disputed kismut rests entirely on parol evidence, and the decision arrived at by the moonsiff on that evidence is not supported by the record.

With the exception to Bahor Saha, none of the witnesses stated as a fact, that Susteeram Singh was formerly in possession of a share of the disputed kismut, on the contrary, one of them, an old ryot named Ram Kristo Saha, deposed distinctly that he never paid rent to him. The witness, Bahor Saha, produced a pottah bearing date 1203 B. S., and some receipts for rent, but, under circumstances of suspicion, he brought them into court uncalled for, eight months after he had given his evidence, stating that he did so at the request of the plaintiff's mookhtar; and at the same time Ram Dyal Saha, son of Ram Kristo Saha aforesaid, produced some receipts at variance with the evidence of his father. Again the fact of possession on the part of the auction purchaser is deposed to by only four witnesses, namely, Bahor Saha and Ram Dyal Saha aforesaid, and Seeboo Kolal and Sham Kolal, the two latter of whom hold no land in kismut Biroree. The plaintiff's witnesses all state that plaintiff took possession and collected one year's rent about ten years ago, after which he was ousted by the defendants; but this is no proof of right, and the sum thus collected appears from the evidence to have been only 3 or 4 rupees altogether.

The moonsiff's statement that none of defendants' witnesses were inhabitants and ryots of Biroree is contrary to fact. Bhadoo Mal, examined before the moonsiff, and Meechoo Mal, Ram Chunder

Singh, Ram Purshad Mochee, Debnurayun Dutt, and Ram Kisub Mundul, examined before the ameen, (whose report is in favor of the defendants,) are all inhabitants and some of them ryots of Biroree; and they gave evidence in support of the answer. The defendants filed in the moonsiff's court their accounts, attested by their gomash-tah, Gourhuree Ghose, together with copies of the *rukba bundee* of 1201, of Ram Kulyan Singh's share of the original estate, now in their occupancy, and of the *dehebundee*, or detail of villages, of another share of the same estate formerly held by Punchoo Hujra, also in their occupancy, in both of which the name of kismut Biroree appears, and these documents, which the moonsiff took no notice of, at least prove that the allotment of the mouzah in the proportions given in the plaint is incorrect. Moreover, the defendants do not appear to be in possession of more land than they are entitled to under the decennial settlement, for the *rukba bundees* show that the extent of Kalee Sunkur Singh and Ram Kulyan Singh's shares of Biroree was 15 beegahs, 18 cottahs, inclusive of Punchoo Hujra's share, the extent of which is not given in the *dehebundee*; and the total quantity of land in the defendants' possession appears, from the plaintiff's own shewing, to be only about 20 beegahs.

I hold that the plaintiff has failed to prove his claim, and I therefore reverse the moonsiff's decision, and decree the appeal, with costs in both courts.

THE 16TH FEBRUARY 1850.

Case No. 91 of 1849.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, March 31st, 1849.

Ram Doollabh Chatoorjya, (Plaintiff,) Appellant,

versus

Manik De and Dwarkanath De, (Defendants,) Respondents.

THIS suit was instituted on the 21st January 1848, to recover the sum of Company's rupees 141-5-4, principal and interest, on a bond alleged to have been executed in the plaintiff's favor by the defendants, under date the 15th Asar 1251 B. S.

The defendants denied the claim *in toto*, and pleaded that the bond was a forgery, got up at the instigation of the plaintiff's aunt, Bama Soondree, because Dwarkanauth De (one of the defendants) had refused to give evidence in her favor in a case instituted under Act XIX. of 1841.

The moonsiff dismissed the suit, on the ground that the bond was a forgery. He arrived at this conclusion on a careful examination of the document, which bore the appearance of having been recently written on an old stamp; on the consideration that two out of the three witnesses produced by the plaintiff had given evidence before,

in support of a plea of payment advanced against execution of a decree taken out in the principal sudder ameen's court, which plea was disallowed; and on the belief that the plaintiff was actuated by illfeelings in bringing forward the claim, as deposed to by the witnesses for the defence.

I do not find any grounds for interference with this decision. There is no direct proof of the bond being a forgery; but there is strong suspicion, arising from the evidence and the circumstances of the case, that it is so, and I therefore confirm the moonsiff's judgment, and dismiss the appeal, with costs.

THE 19TH FEBRUARY 1850.

Case No. 194 of 1849.

Regular Appeal from a decision passed by the late Moonsiff of Doobraj-pore, Moulvee, Attu Alee, September 5th, 1849.

Rukhyukur Mookhopadhya, (Defendant,) Appellant,

versus

Gourmunee Kuloonee, (Plaintiff,) Respondent.

THIS suit was instituted on the 24th November 1848, to try a demand for rent and to recover damages on account of illegal distraint.

The plaintiff stated that she held in lot Chundurpore beegahs 23-15 of land, at a jumma of Company's rupees 35-2; that the gomashitah of lot Chundurpore had instituted a suit against her, under Regulation VII. 1799, to recover a balance of rent for the year 1243 B. S., and at the instigation of Benee Madhub Chukurbutee, the talookdar of lot Hureedaspore, she was induced to file an answer in his favor, but the collector disallowed the objection, and decreed the suit in favor of the talookdar of lot Chundurpore, under date the 17th July 1837: she in reality held no land in lot Hureedaspore: that the defendant, Rukhyukur Mookhopadhya, the farmer of 7 annas share of lot Hureedaspore, had now issued an attachment of distraint against her property, to recover an alleged arrear of rent with interest to the amount of rupees 17-9-3, for the year 1254, and having deposited the sum demanded, she instituted this suit to contest the same, and to recover damages equal to double the amount.

The defendant, Rukhyukur Mookhopadhya, in answer, stated that the plaintiff had held from the time of her husband, in Deegulgram plain, belonging to chuk Nuruttun, lot Hureedaspore, beegahs 30-14 of land, at a jumma of rupees 45-6; that she acknowledged in the summary suit referred to in the plaint, that she held beegahs 32 of land at that amount of jumma in the said chuk, but the quantity of land entered in the zemindaree accounts was only beegahs 30-14; that from 1251 to 1253 B. S., he (defendant) was

employed as manager of lot Hureedaspore on the part of the talookdars, and she paid to him the rent of those years without dispute; that at the commencement of 1254 he took a 7 annas share of the lot in farm, and in the month of Agrahon of that year the plaintiff signed an account acknowledging the correctness of the demand now contested by her; and a complaint subsequently brought by her in the foudaree court against him, on the charge of having taken the account from her by force, was dismissed.

The plaintiff, in reply, acknowledged that she had complained against the defendant in the foudaree court for having forced her to sign the account referred to, but maintained that her charge was fully proved.

Nirunjun Raee, the gomashtah of lot Chundurpore, who was made a defendant to the suit, filed an answer in support of the plaintiff.

The moonsiff found that the quantity of land entered in the plaintiff's name in the zemindaree accounts for the years 1251, 1252, and 1253, filed by the defendant, did not correspond with the quantity of land entered in the accounts for the year 1250, produced by the 9 annas proprietors, though the amount of jumma was the same, and that there was a discrepancy in the amount of interest demanded on the arrear the subject of dispute. He therefore was of opinion that there was no necessity to go into the evidence of the witnesses examined on both sides, and, considering the demand false, he decreed the suit in favor of the plaintiff, awarding the amount of damages claimed in full, under Clause 2, Section 5, Regulation VIII. 1793.

The discrepancies noticed by the moonsiff are clearly insufficient to warrant a decree in the plaintiff's favor. The moonsiff should have gone into the evidence and decided whether the plaintiff had paid rent to the proprietors of lot Hureedaspore, for the year previous to that for which the suit is instituted or not; and in awarding damages, he should have been guided, not by the Regulation quoted by him, which is not applicable to the case, but, by Construction No. 327, on Section 6, Regulation XVII. 1793. Considering the decision incomplete and illegal, I reverse the same, and send back the case for re-trial with reference to the foregoing remarks.

THE 20TH FEBRUARY 1850.

Case No. 135 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Dhekkabaree,
Neel Madhub Mookerjee, March 23rd, 1849.*

Ram Purshad Kurmokar and Tyluknath Kurmokar, (Defendants,) Appellants,

versus

Mookhtaram Dutt, (Plaintiff,) Respondent.

THIS suit was instituted on the 12th February 1848, to recover the sum of Company's rupees 104-8-6, principal and interest, on a bond alleged to have been executed in the plaintiff's favor by the defendants, Ram Purshad Kurmokar and Gooroo Purshad Kurmokar, deceased, (the father of the defendant, Tyluknath Kurmokar,) under date the 3rd Chyte 1245 B. S., on the collateral security of a rent-free garden and tank in adjustment of a former debt.

The defendants, Ram Purshad Kurmokar and Tyluknath Kurmokar, in answer, denied the claim, and pleaded that Gooroo Purshad Kurmokar died in the month of Bhadro 1245, before the date of the bond, and the bond was consequently a forgery.

The moonsiff decreed the suit in favor of the plaintiff, on the grounds that execution of the bond was well proved by the subscribing witnesses; that three of the plaintiff's witnesses proved that the defendants, on demand, promised to pay the money; and that the evidence of the witnesses examined in support of the answer was unworthy of confidence, for they could not satisfactorily explain how they came to recollect, after so long a lapse of time, that Gooroo Purshad Kurmokar died in the month of Bhadro 1245, as stated by them.

I consider the plea that Gooroo Purshad Kurmokar died before the date of the bond refuted by the record of a suit No. 223 of 1836, in which a decree was passed in the sudder ameen's court in favor of the said Gooroo Purshad Kurmokar and others, on the 11th September 1838, execution of which was taken out on the 18th February 1839, and the case remained on the file up to the 30th November 1839, corresponding with the 16th Agrahon 1246 B. S., without any mention being made of the deceased's death; and concurring with the moonsiff in opinion that the bond is duly proved, I confirm his decision, and dismiss the appeal, with costs.

THE 21ST FEBRUARY 1850.

Case No. 192 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Soory,
Koolodanund Mookerjee, August 6th, 1849.*

Seebnath De, Bamachurn De and Denoo De, (Defendants,)
Appellants,

versus

Nurayun Keeot, (Plaintiff,) Respondent.

THIS suit was instituted on the 18th August 1848, to recover the sum of Company's rupees 13-14-6, as damages on account of the loss of a fishing net.

The plaintiff stated that he was employed with others on the part of Shama Soondree Dasya, on the 30th Bysakh 1255 B. S., in snaring fish with a large sized net, in a tank named Kirkee at mouzah Raepore, when he was opposed by the defendants, who took away his net and carried it off; he therefore sued for the value of the net, by which he gained his livelihood, 5 rupees, and damages in compensation for its loss at the rate of 2 rupees, 13 annas the month.

The defendants (appellants) admitted having opposed the plaintiff on the occasion in question, stating that they did so because Shama Soondree Dasya had no right to take the fish from the tank without their concurrence; but they pleaded, that plaintiff ran off and dropped the net in his flight, that they took it up and carried it home and afterwards restored it to him in the presence of witnesses. They objected to the valuation, alleging that the net was not worth 5 rupees, and that the compensation claimed, being at the rate of 1 anna and a half a day, was preposterous, for the net was only used in catching large fish and that occasionally.

The moonsiff found that the defendants' plea, that they had returned the net, not proved by the evidence adduced by them, that it was proved by the plaintiff's witnesses that the net was taken from him by force, that its value was rupees 2-8, and that the plaintiff could earn by it 1 anna a day, when he had an opportunity of making use of it, which did not occur every day, it being of the description used only in snaring large fish in tanks. He was of opinion, therefore, that damages at the rate of 1 anna a day for 15 days in the month sufficient, and he accordingly decreed the net, or its value rupees 2-8, and damages at that rate up to the date of his decision, being rupees 13-13-6, with costs of suit and further damages at the same rate until the net be restored, or its value paid.

Concurring with the moonsiff in his finding on the facts of the case, but not in the amount of damages awarded, which appeared to me disproportioned to the value of the net, which is an article capable of being replaced, I referred the suit under Section 3, Regula-

tion VI. 1832, to a punchaet, composed of men of the same castes as the parties to the suit, to assess the damages; and the punchaet record their opinion that, with reference to the fact that the net was only made use of occasionally, damages to the amount of rupees 2-4, being at the rate of 4 annas a month up to the date of the moonsiff's decision, was a fair compensation for its loss.

In this finding I concur, and I accordingly decree to the plaintiff, in amendment of the moonsiff's decision, the value of the net, rupees 2-8, damages rupees 2-4, and full costs in the lower court, with interest thereon from the date of the moonsiff's decision to the date of payment. The costs in this court to be charged to each party respectively.

THE 23RD FEBRUARY 1850.

Case No. 204 of 1849.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, 24th August 1849.

Krishto Chunder Bhattacharj and Kalee Kaunth Bhattacharj,
(Defendants,) Appellants,

versus

Dhun Krishto Bhattacharj and others, (Plaintiffs,) Respondents.

THIS suit was instituted on the 27th November 1848, to recover the sum of Company's rupees 632-10, principal and interest, on account of certain allowances chargeable on the rents of mouzah Chundeepore *oorf* Oosoodihi, from the year 1245 to 1254 B. S., inclusive, at the rate of rupees 35 the year.

The substance of the plaint is, that the plaintiffs' ancestor, Chutoorbhoj Turkkabageesh, and the defendants' ancestor, Lukhee Kaunth Bhattacharj, were full brothers; that, agreeably to *hissana-mahs*, or deeds of partition, executed in the years 1181 and 1221 B. S., the plaintiffs were entitled, hereditarily, to receive from the rents of the lakhiraj muhal, mouzah Chundeepore *oorf* Oosoodihi, a personal allowance of rupees 67 a year, under the denomination of Chutoorbhoj Turkkabageesh's *jyeshitutu murjyada*, being as a mark of respect to the eldest brother, and an allowance of rupees 3 a year under the denomination of Kumla Kaunth Bhattacharj's *prunamee*, which were admitted by Lukhee Kaunth Bhattacharj and his heirs up to the year 1222; that the allowances for the year 1223 to 1231 were made the subject of a suit No. 657, and by the decision of the judge, passed on the 11th March 1828, the sum of rupees 70 a year, payable from the gross proceeds of the muhal, was awarded in the plaintiffs' favor against the defendants, Krishto Chunder Bhattacharj and Kalee Kaunth Bhattacharj, the grandsons of Lukhee Kaunth Bhattacharj, and the muhal being in the

possession of the plaintiffs and defendants in equal shares, the plaintiffs received from the defendants under that award a moiety, or the sum of rupees 35, and continued to receive the same up to the year 1244; that the allowances from 1245 to 1254 had been withheld by the defendants, and the plaintiffs therefore now sought to recover the amount with interest.

The defendants, in answer, pleaded that the muhal Chundeepore *oorf* Oosoodihi, was resumed in favor of Government in the year 1837, and had since been settled with the plaintiffs and themselves at half jumma, and therefore the agreement under which the allowances claimed were made chargeable on the rents of the muhal had become null and void; that the plaintiffs moreover advanced no claim to the allowances at the time of the settlement with the Government, or when the muhal was subsequently let out in putnee to Bisumbhur Singh, by whom it was now held, and consequently the suit was untenable.

The plaintiffs, in their reply, admitted the facts stated in the answer, but denied that they constituted any reason for setting aside the decree of court passed in their favor.

The principal sudder ameen was of opinion that, as the muhal had been resumed and settled with the parties at half jumma, the plaintiffs were entitled in equity to one-half of the amount of the allowances claimed by them, inasmuch as the sunnud, dated the 11th Jeth 1169 B. S., under which the rent-free tenure was granted by Mahendur Nurayun Raee, shews that the muhal was originally acquired by Chutoorbhoj Turkkabageesh, and the allowance of jyeshtutwu munjyada was probably made on that account; that the two precedents of the Sudder Dewanny Adawlut produced by the defendants related to allowances denominated *moshaira* and *birt*, and therefore were not applicable to the case in point. He accordingly decreed to the plaintiffs one-half of their claim.

The precedents produced by the defendants are, one, the decision of the Sudder Dewanny Adawlut, passed on the 20th June 1842, in the case No. 174 of 1842, Ramchund Baboo and Muneo Koomaree Bibi, wife of Anund Chund Baboo, petitioners, *versus* Maharaja Mahtab Chand Bahadoor, in which the Court, present Messrs. Rattray and Reid, decided that a certain money allowance denominated *moshaira*, previously decreed on the assets of a rent-free muhal named *turf* Tajpore, could not be claimed after the muhal was resumed in favor of Government, and this notwithstanding that it was urged on the part of the petitioners that only 18 out of the 27 mouzabs comprising the muhal had been actually resumed, and the settlement had been made with the maharaja at half jumma; the other, the decision of the Sudder Court, present Mr. Hawkins, passed on the 7th March 1848, on the petition of Ishur Chunder Thakoor, in which it was ruled that money allowances granted as charges upon estates previous to the decennial

settlement were not cognizable by Section 17, Regulation XXIV. 1793.

On the principle of those decisions, I am of opinion that the present claim is untenable.

In the original deed of partition of 1221, now before me, I find the charge of rupees 63 entered as follows : বড় তর্ক বাণীষ গোল্যামীর জেটএব মজুদা প্রণামীদী, which may be translated “complimentary and other allowances to Bura Turkkabageesh Goshamee, deceased, in consideration of his being the eldest brother,” and this charge, together with other charges under other heads, (including Kumla Kaunth’s prunamee, rupees 3,) to the amount of rupees 118 in all, were deducted from the gross assets of the estate, the balance, including profits and loss, being divided between the parties in shares. Had the muhal, the gross proceeds of which were only rupees 654-1-5, been resumed at the time of the agreement was entered into between the parties, the charges in all probability would not have been allowed. The circumstances of the estate have changed. I therefore reverse the principal sudder ameen’s decision, and decree the appeal, with costs in both courts.

ZILLAH BEHAR.

PRESENT: C. STEER, ESQ., OFFICIATING ADDITIONAL JUDGE.

THE 1ST FEBRUARY 1850.

No. 100 of 1848.

*Appeal against the decision of Muhumud Alli Ashruff, Moonsiff of Behar,
dated 25th April 1848.*

Rewut Lal, Pooneet Lal, Alum Chund, Jhoomuk Lal, Jhurree Lal,
Nund Lal, Horil Singh, and Bholanath, (Plaintiffs,) Appellants,

versus

Rohun Lal, Mahtab Lal, Duleep Singh, Bed Nurain, Mewa Lal,
Choa Lal, and Shunker Lal, (Defendants,) Respondents.

THIS suit was instituted on the 20th February 1847, to recover rupees 182-14-4-16, principal and interest of the defendants' portion of expenses incurred by the plaintiffs in obtaining a share of a water-course in mouzah Dhoondhelee, pergunnah Jurrah, according to a deed of partnership, dated 28th February 1835.

The plaint sets forth that mouzah Rajundpoor, pergunnah Jurrah, was the joint property of plaintiffs and defendants; the former being proprietors of annas 12-6, and the latter of annas 3-6; that with the consent of all the partners, the plaintiffs obtained from Gujraj Singh, the proprietor, in consideration of a douceur of 392 Sicca rupees, the use of a water-course in mouzah Dhoondhelee; that from the water thus obtained for irrigation, the plaintiffs and defendants were mutually benefitted, but up to the present time the defendants have not paid up their share of the money paid. Hence this suit.

Duleep Singh makes answer that he jointly with his brothers, Rohun Lal and Mahtab Lal, are indebted to the plaintiffs, on account of the said water-course, the sum of Sicca rupees 58, for which the plaintiffs' vakeel has accepted an instalment bond.

Choa Lal makes answer that he and his brother, Mewa Lal, owe the plaintiffs rupees 28, annas 6, on account of the said water-course for which they have given him an instalment bond.

Bed Nurain makes answer and says, that the amount of his individual liability ought to have been specified; that in mouzah Rajundpoor there was an old water-course, and that the story of the plaintiffs about the payment of the douceur for the use of the water-course in Dhoondhelee is false; that he never agreed to the deed of

partnership, and if it had been really executed, the plaintiffs would have sued upon it earlier.

Rohun Lal, Mahtab Lal, and Mewa Lal make no reply.

The moonsiff observes that it is not sufficient that certain of the defendants admit their liability. As Bed Nurain resists the claim, it was the duty of the plaintiffs to prove it, and as they had failed to do so, the two witnesses, examined on their behalf, being discrepant, he dismissed the suit.

In appeal, it is urged that the transaction was beyond suspicion, the deed of partnership having at the time been registered, and Gujraj Singh, to whom the consideration was paid, not having denied it.

JUDGMENT.

Under the circumstances, the moonsiff ought, I think, to have been satisfied with the evidence; but if not, he should have required the plaintiffs to produce their other witnesses. Of seven defendants sued jointly for rupees 182-14-4-16, six of them confess their liability to the extent of rupees 145-3-8-8, and two witnesses proved the transaction in which the claim originated. The deed of partnership is also registered, and as the defendant who now resists it made no demur at the time, and as he benefitted equally with the other defendants in the transaction, it is right that he should pay his share of the expenses incurred. I therefore reverse the order of the moonsiff, and decree the appeal, with costs, against all the defendants.

THE 4TH FEBRUARY 1850.

No. 184 of 1848.

Appeal against the decision of Moulvee Mahomed Abdool Luteef, former Acting Moonsiff of Jehanabad, dated 12th August 1848.

Musst. Wuzeerun and Sheik Tufuzzul Hosein, Appellants in the suit of Gujjoo Singh, for self and as guardian of Ishur Singh, his minor son, (Plaintiffs,) Respondents,

versus

The Appellants and Munnoo Jan Gomashta, Defendants.

THIS suit was instituted on the 25th January 1848, to set aside an illegal attachment, and to obtain the refund of rupees 25-1-6, the amount of a deposit in the hands of the sale commissioner.

The defendants, claiming rupees 25-1-6, as arrears of rent of 1254 F., attached the property of the plaintiffs for the amount. The plaintiffs deny the arrears, and having deposited the amount claimed in the hands of the sale commissioner, bring this suit to reverse the attachment, pleading that Gujjoo Singh's rents for 1254 F. were fully liquidated by the payment of rupees 5-1-9, cash, and the division of the produce of the lands paying rent in kind.

The defendants (appellants) admit that the rents of the lands paying a money rent and those of which the rents are paid in kind, by division of the actual produce after its collection at the khullean, were duly discharged; but the rent of certain lands held by the plaintiffs under a danabundee assessment, was altogether in arrears, for which the defendants made the attachment now complained of.

The moonsiff, being of opinion, that the investigation made by a local ameen, and the evidence of the plaintiffs' witnesses fully established that the produce of the lands paying rent in kind was duly divided with the defendants' umlah, and that the plaintiffs cultivated no other lands of which the rents were assessed on the danabundee system, decreed the case in favor of the plaintiffs. And being of opinion, from a perusal of the record, that no sufficient grounds have been shewn to impugn the correctness or justness of this decision, I hereby confirm it, dismissing this appeal, with costs.

THE 4TH FEBRUARY 1850.

No. 105 of 1848.

Appeal against the decision of Syed Muhumud Furreedooddeen, Moonsiff of Aurungabad, dated 3rd May 1848.

Imrit Lal, (Defendant,) Appellant,

versus

Nukheed Pasban, farmer, and Ramoo Pasban, security, (Plaintiffs,) Respondents.

Objectors, Birjlal Ram and Bishun Chund Ram.

THIS suit was instituted on the 28th December 1847, to set aside an unjust attachment.

The plaint sets forth that the defendant, alleging that rupees 33 were due to him as arrears of rent for 1254 F., on account of his 1 a., 2½ d. share of mouzah Sonebursah, attached the plaintiffs' property for the amount. They deny the arrears and bring this suit to contest the attachment, pleading that they hold a 4 a., 12 d. share of the village named, in farm from the defendant, Birjlal Ram, Gopee Chund, and Bishun Chund, according to a joint pottah granted to him by those parties on an yearly jumma of rupees 106. According to which the individual share of Imrit Lal, the defendant, was rupees 26-8, which sum the plaintiff more than paid on account of 1254 F.; so that the attachment against them was unjust and illegal.

Imrit Lal answers that, according to a kabooleut executed by Nukheed Pasban, his yearly rent is 37 rupees; that in 1253 F. he was a defaulter; and that in 1254 F. he had only liquidated 8 rupees of his rents, leaving 33 rupees in balance, for which he took out process of attachment. He denies having joined the above named

parties in the pottah, alleged by the plaintiffs to have been given in their favor.

Birjlal and Bishun Chund, objectors, also deny the execution of the pottah.

The moonsiff observes that both parties agreed to abide by the oath of Birjlal, but in his deposition he said that he could not state what was the amount of rent due to Imrit Lal. The moonsiff therefore takes it on himself to decide that the sum may be assumed to be what Birjlal's own share has been farmed at, which being rupees 26-8, he takes that to be the yearly rent due to the defendant, from which deducting 8 rupees, acknowledged to have been paid, he declares the defendant entitled to rupees 18-8, and accordingly upholds the attachment to that extent.

The defendant appeals, urging his right to claim, according to the plaintiffs' Kubooleut in his hands, the yearly rent of 37 rupees.

JUDGMENT.

This is an unsatisfactory decision. Either party refers to written deeds on which they respectively found their claims. The pottah of the plaintiffs appears never to have been filed, and the moonsiff has paid no regard to the kubooleut produced by the other. I remand the case, and desire that the moonsiff will call for and decide on the documents produced by the parties, after hearing the evidence which may be adduced in their support. The value of the stamp for the appeal will be refunded in the usual manner.

THE 5TH FEBRUARY 1850.

No. 128 of 1848.

Appeal against the decision of Syud Muhumud Alli Ashruff, Moonsiff of Behar, dated 19th June 1848.

Jeebun Roy, (Plaintiff,) Appellant,

versus

Nusseerun, (Defendant,) Respondent.

THIS suit was instituted on the 18th August 1847, to recover rupees 148-14, principal and interest of a bond executed by the defendant in the plaintiff's favor, and dated 15th Kartick 1254 F.

The defendant denies the claim *in toto*, and says he never executed the bond, and that he was at Patna on the date of its alleged execution; he states moreover, that the plaintiff is a man of no means, and that he is a servant of one Soobun Singh, with whom the defendant has a quarrel.

The moonsiff observes that the defendant alleges that this is a suit brought at Soobun's instigation, whose servant the plaintiff is. The plaintiff denies this assertion, but two out of his three witnesses corroborate the defendant's statement, so that the plaintiff is clearly

guilty of a falsehood ; and as the defendant satisfactorily established his own statement, in the opinion of the moonsiff, he dismisses the suit.

The plaintiff appeals, stating that with respect to the *alibi* pleaded by the defendant, the moonsiff of Behar sent to the moonsiff of Patna written interrogations to be put to certain witnesses residing in the town of Patna ; which, after the lapse of one month and four days, during which time the plaintiff was present at the Patna moonsiff's court, was returned to the Behar moonsiff, because the defendant did not make his appearance to point out his witnesses. On this the plaintiff left Patna, but the same day that the interrogations were returned, the defendant got the moonsiff of Behar to send them a second time to Patna, which being done, the defendant proceeded with all haste himself to that place, and, obtaining the aid of two persons to personate Thakoor Chund and Soosheet Lal, mookhtears, witnesses named by him; caused them, in absence of the plaintiff, to be examined in support of his alleged *alibi*. Their written evidence being sent to the Behar moonsiff, and the plaintiff, having learnt the particulars of this affair, petitioned the moonsiff of Behar, informing him of the villany of the defendant, and praying that he would summon the parties named and examine them himself. But he rejected the defendant's petition, and a letter sent by the said Thakoor Chund and Soosheet Lal, in which they denied that they had given evidence in the defendant's favor, before the Patna moonsiff, met with no better attention, and the plaintiff was referred to the criminal court of Patna to prosecute his charge of perjury and personation.

JUDGMENT.

That the appellant did give a petition of the nature mentioned, and that a letter was received by the Behar moonsiff, purporting to have been written by Thakoor Chund and Soosheet Lal, to the effect stated by the plaintiff, appellant, is plain from the existence of those papers in the record of the case. These having been received while the suit was still pending, it was the duty of the moonsiff to have suspended his final orders till the truth or falsehood of this serious charge, on which the goodness of the defence in the civil suit before him mainly rested, had been established, and with this view he ought to have requested the Patna moonsiff to investigate the charge in presence of the parties, who, if the personation and subornation of perjury were proved, would, of course, under Clause 2, Section 14, Regulation XVII. of 1817, have referred to the judge of his zillah, to commit the guilty parties for trial on those charges, or if the accusation had been false, the appellant (supposing of course that he had previously sworn to the truth of his statement) would be liable to the same course for bringing a false accusation. On this ground I must annul the decision of the lower court, and remand the case, in order that the moonsiff may communicate with the moon-

siff of Patna to whom the former will be so good as to furnish a copy of these remarks, and have the charge against the defendant and his witnesses properly and thoroughly investigated; till which time the moonsiff will suspend the decision of the suit before him. On the completion and conclusion of this trial, the moonsiff of Behar will review his former judgment, adhering to or amending it according as the result of the enquiry in the plaintiff's charge may prompt him to abide by, or make any alteration in, his decision. The value of the stamp for the appeal is to be refunded.

THE 7TH FEBRUARY 1850.

No. 41 of 1848.

Appeal against the decision of Syud Tuffuzul Hossein Khan, Sudder Ameen of Gya, dated 6th September 1848.

Bhojraj Singh, (Plaintiff,) Appellant,

versus

Dumree Singh and Lohrie Pershad Singh, (Defendants,) Respondents.

THIS suit was instituted on the 17th January 1848, to contest a summary award of the deputy collector of Gya, dated 12th November 1847. Suit valued at rupees 47-6-1, the amount of the summary decree.

The plaint sets forth that the defendants, calling themselves farmers of 12 annas of mouzah Khanpoor Boonyadpoor, brought a summary suit against the plaintiff for arrears of rent of 1254 F., which was decreed in their favor. The plaintiff sues to reverse that award, pleading that in the two villages of Khanpoor Boonyadpoor and Luchmeepoor, he held certain lands the rents of which were assessed partly in money and partly in kind; that the amount of both assessments for the year 1254 F. was rupees 5-6-6, of which he paid to Ishrie Pershad Singh 1 rupee in cash, and gave him a cow and calf valued at rupees 4-6, thus liquidating his rents in full.

The defendants answer that the rent payable by the plaintiff in the year in dispute, was rupees 47-6-1, of which he paid not a fraction.

The sudder ameen dismissed the suit, in proof of the arrear being due to the defendants. And being of the same opinion, from a perusal of the record, I confirm that decision, and dismiss this appeal, with costs.

THE 7TH FEBRUARY 1850.

No. 40 of 1848.

Appeal against the decision of Syud Tuffuzzul Hossein Khan, Sudder Ameen of Gya, dated 6th September 1848.

Rejhun Singh, (Plaintiff,) Appellant,

versus

Dumree Singh and Ishrie Pershad Singh, (Defendants,) Respondents.

THIS suit was instituted on the 17th January 1848, to contest a summary award of the deputy collector of Gya, dated the 12th November 1847. Suit laid at rupees 46-7-6, the amount of the summary decree.

The plaintiff sets forth that the defendants, calling themselves farmers of 12 annas of mouzah Khanpoor Boonyadpoor, brought a summary suit against the plaintiff for arrears of rent of 1254 F., which was decreed in their favor. The plaintiff sues to reverse that award, pleading that he held no lands in 1254 F., having thrown up his holding the year before. He also objects to the luggut, or account of assessment, as an incorrect record, and alleges that the defendants have no right to the rents of the village in question, as the advance, in consideration and in virtue of which they obtained the farm from the plaintiff and the other sharers, has been fully liquidated.

The defendants reply that in the summary suit case the plaintiff was proved to have cultivated his lands, and that he was in arrears to the amount claimed.

The sudder ameen dismissed the suit, in full proof that the arrear was due. And being of the same opinion, from a perusal of the record, I confirm that decision, and dismiss this appeal, with costs.

THE 13TH FEBRUARY 1850.

No. 194 of 1848.

Appeal against the decision of Syud Tuffuzzul Hossein Khan, Moonsiff of Gya, dated 26th August 1848.

Ram Pershad, (Plaintiff,) Appellant,

versus

Neilanath Missur, (Defendant,) Respondent.

Claimant, Gokhool Sahoo.

THIS suit was instituted on the 27th March 1848, to recover rupees 266-14, principal and interest of a bond, dated the 5th October 1847, executed by the defendant in the name of Gokhool Sahoo.

The claimant, Gokhool Sahoo, alleges that the bond is his property, and that he gave the money for which the same was executed.

Neilanath, the defendant, replies, admitting the execution of the bond in favor of Gokhool Sahoo, who, he alleges, was not the ostensible but the real lender, and that he has moreover repaid him part of the money borrowed.

The moonsiff dismissed the suit on the deposition of two of the attesting witnesses to the bond, and on the evidence of the writer of it. And being of opinion that the plaintiff has entirely failed to prove that the money was borrowed from him, or to explain why the bond was executed in favor of a party not the real lender, I agree with the decision of the lower court, and dismiss this appeal, with costs.

THE 14TH FEBRUARY, 1850.

No. 154 of 1848.

Appeal against the decision of Syud Muhumud Fureedooddeen, former Moonsiff of Aurungabad, dated 7th July 1848.

Gobind Singh and Gunga Singh, Appellants in the suit of Musst. Kuddum Kooner, mother and guardian of Kashee Singh, the minor son of Abhey Singli, deceased, (Plaintiff,) Respondent,

versus

The Appellants, Chutterbhooj Singh, Rughbeer Singh, Hurkhoo Singh, and Deendyal Singh, Defendants.

Objector, Sreenath Singh.

THIS suit was instituted on the 10th January 1848, to recover rupees 29-14, principal and interest, on account of arrears of rent of 1253 and 1254 F.

The plaint sets forth that an 8 anna share of mouzah Mulleeharee, pergunnah Kootoomba, belongs in equal portions, of 2 annas each, to Rughbeer Singh, Hurkhoo Singh, Deendyal Singh, and the plaintiff's minor son, Kashee Singh. The same is in farm to Gobind Singh, Gunga Singh, and Chutterbhooj Singh, from 1248 to 1258 F. on a jumma of rupees 181. Up to 1253 F., they paid their rents in full, but of the sum of rupees 50-8, due to the plaintiff as her son's share of the rents for 1253 and 1254 F., the defendants, the farmers, have only liquidated rupees 21-8. The plaintiff accordingly brings this suit for the recovery of the balance.

Gunga Singh and Gobind Singh answer, that the latter alone obtained the farm of the 8 anna share held by the plaintiff's son and co-sharers. Gobind Singh does not dispute the amount of rent, nor does he deny that the portion claimed by the plaintiff, is not due to her; but he pleads that the co-sharers jointly borrowed rupees 575, from Gunga Singh, and assigned over to him in consideration thereof, the rents of 1248 to 1254 F. According to which

Gobind Singh has paid to Gunga Singh the rents of the period claimed. Gobind Singh further pleads, that the plaintiff sold to him her son's share of the estate, which was 4 and not 2 annas out of the 8 held jointly by the parties above named, according to a deed of sale, dated 21st Phalgun 1253.

Sreenath Singh, a third party, petitions, and states that he purchased the 6 annas of the village, held by Rughbeer Singh, Hurkhoo Singh, and Deendyal Singh, for 1,600 rupees, according to a deed of sale, dated 17th March 1846.

The moonsiff remarks that Kashee Singh being a minor, the assignment bond in favor of Gunga Singh is not valid, and as the defendant (Gobind Singh) does not dispute the amount of the share held by the plaintiff's son, or the amount of rent claimed on account of it, he decrees the suit against Gobind Singh, releasing all the other defendants from responsibility.

JUDGMENT.

For what purpose Gunga Singh and Chutterbhooj Singh have been associated with Gobind Singh as farmers, it is impossible to say, but it is certain that the latter only obtained the farm. Chutterbhooj Singh was not in existence when this suit was brought: if that fact was unknown to the plaintiff, at the time of the institution of her suit, she knew it when the defendants filed their answer; but still she took no steps to amend her plaint, or place Chutterbhooj Singh's heirs in his room. Her co-sharers sold their interest to Sreenath Singh a full year prior to the date of the plaintiff's coming into court, this (if the plaintiff did not know it before) was brought to her knowledge in time to have enabled her to amend her plaint, but she took no measures to correct it. A reply on her part was indispensable to clear up many points pleaded in the defendants' answer, but none was given. The moonsiff erred in not nonsuiting the plaintiff for these irregularities. I therefore reverse his decision, and nonsuit the plaintiff, charging her with all the costs of this suit.

THE 16TH FEBRUARY 1850.

No. 192 of 1848.

Appeal against the decision of Syed Tuffuzzul Hossein Khan, Moonsiff of Gya, dated 13th September 1848.

Shunkurlal Gyawal, (Defendant,) Appellant,

versus

Bhenuk Tewaree, (Plaintiff,) Respondent.

THIS suit was instituted on the 7th June 1848, to recover the sum of rupees 40-5, the balance of an account.

The plaintiff states that he is an up-country man, and has for some years carried on the trade of a cloth merchant at Gya. The defendant bought of him, between the 8th Assin and the 16th Bysak Sumbut 1904, various articles of cloth to the value of

rupees 182-1, of which he paid, on various dates, the sum of rupees 140-12. The plaintiff, being unable to obtain from him the balance, brings this suit against him for it.

The defendant admits that he dealt with the plaintiff and bought of him 77 rupees worth of cloth, of which he paid the price in full, as would appear from his accounts kept by his writer.

The moonsiff remarks that the plaintiff was willing to abide by the oath of the defendant, but the latter would not consent to this mode of decision; that defendant's mohurrir deposed that he persuaded the plaintiff to give up his intention of complaining against the defendant in the criminal court, on the subject of this suit, and recommended him to settle the matter amicably, on which the defendant agreed to pay rupees 28 in settlement of his claim, but the plaintiff was not satisfied; that, although there are some flaws and irregularities in the plaintiff's proceedings, owing to his not being acquainted with the legal customs of these parts, they are not enough to invalidate his claim, which is well established by the evidence of his witnesses. The moonsiff accordingly decrees the case in his favor.

JUDGMENT.

The account on which the suit is founded, is written on plain paper. If the remarks of the moonsiff are meant to excuse the plaintiff for this irregularity, he has no authority to set aside the regulations on the ground of the presumed ignorance of the plaintiff. I therefore reverse his decision and remand the case, desiring that he will nonsuit the plaintiff, or allow him a reasonable time, should there be any special reason for such an indulgence, to get the paper stamped; when he will decide the case *de novo*. The moonsiff will not neglect to fine the plaintiff's vakeel for filing such a document in contravention of Clause 1, Section 18, Regulation X. of 1829.

The value of stamp for appeal will be refunded to the appellant in the usual manner.

THE 18TH FEBRUARY 1850.

No. 119 of 1848.

Appeal against the decision of Moulvee Mahomud Ally Ashruff, Moonsiff of Behar, dated 22nd May 1848.

Khooblal Mahtoon, Kunniiah Mahtoon, Chummun Mahtoon, and Rajaram Mahtoon, Appellants in the same suit of Buckhban Singh, (Plaintiff,) Respondent,

versus

The Appellants, Kokil Chand Mahtoon, Jeun Mahtoon, Neila Mahtoon, Bheema Chand Mahtoon, Choolun Mahtoon, Joomun Mahtoon, Bhola Mahtoon, and Toril Mahtoon, (Defendants.)

THIS suit was instituted on the 20th September 1847, to recover possession in 4 beegahs 5 biswas, out of 17 beegahs of land, apper-

taining to mouzah Akhburpoor Soosandee, pergunnah Haylee Behar, with mesne profits from 1247 to 1254 F. Suit valued at rupees 221-4-10.

The plaint sets forth that the village in question, having been resumed by Government as an invalid lakhiraj tenure, recorded in the name of Shah Ruzzeoollah Dervais, a permanent settlement was made of the same with the plaintiff, and other parties, his co-sharers, from 1247 F., on a jumma of rupees 168. The defendants are in possession of two different patches of land, partly occupied by houses, and partly under cultivation, called respectively, Chutterputtee Khunda and Duchnee Khunda, which were settled with the plaintiff and his co-sharers as belonging to mouzah Akhburpoor. By present measurement the area of these two parcels of land is 17 beegahs, of which defendants keep forcible possession and refuse to pay the rents. The plaintiff therefore brings this suit for his portion, which is, one-fourth of the land usurped by the defendants, with mesne profits of the same from 1247 to 1254 F.

Kokil and Jeun make no answer.

The answer of the other defendants, is in substance to the effect, that mouzah Akhburpoor consists of three divisions, two divisions are altumgah, and one is a nizamut mehal. One altumgah division called after the name of Abdool Kasim Khan, was settled with Deokee Nundun and Hukeem Futteh Alli. The other tenure, called altumgah Ruzzeoollah was settled with the plaintiff, and the nizamut mehal, settled at the time of the decennial settlement, is held mokurruree by the defendants Rajahram, Chummun, Kunniah, and Khooblal Mahtoon. The lands of these three divisions of Akhburpoor are separate and their boundaries, are distinct. The land called Chutterputtee Khunda is comprized in all the three divisions, but so far as the same belongs to the altumgah divisions, that is, already in possession of the plaintiff, and the party with whom the tenure called Abdool Kasim Khan has been settled. As to the land called Duchnee Khunda, there is no such within any of the divisions of Akhburpoor, but a patch so called, lies in the village of Rampoor Chundwarah, the property of the defendants, to which of course, the plaintiff can have no claim.

The moonsiff records, in his decision, that the question to determine is, who is in possession of the two parcels of land called Chutterputtee Khunda and Duchnee Khunda, which, at the time of settlement of Akhburpoor, was in the possession of Kokil Chand and Jeun Mahtoon. It is, the moonsiff observes, sufficiently clear from the statement of the defendants, that they are in possession, and they claim it as part of the mehal held by them in mokurruree. Now, as the land in dispute (the moonsiff continues) was given in settlement to the plaintiff and his co-sharers, they have a clear right to it; but as it is not proved that the land occupied by the houses, to which the plaintiff lays claim, was included in his settlement,

his right to that is not established. The moonsiff, therefore, decrees the suit in favor of the plaintiff, for the land described as cultivated, together with mesne profits claimed on account of the same, and costs in proportion. He limits the decree, against Khooblal, Kunniah, Chumman, Rajaram, Mahtoon, Kokil Chund, and Jeun Mahtoon, releasing the other defendants, whom the moonsiff considers to have had no share in dispossessing the plaintiff.

The appellants urge, in their appeal, that whatever lands the plaintiff is entitled to by the terms of the settlement, that he already possesses, and that his object in bringing this, is to get possession of other lands, to which he has no right.

JUDGMENT.

There is no dispute that the plaintiff, a part proprietor of the resumed altungah tenure in Akhburpoor, has a right to his portion of whatever lands were included in the settlement of that estate made with him and his co-sharers. The only questions are, may he not be already in possession? and, if not, who is? These essential points are by no means plainly apparent, nor can they be satisfactorily known without a local investigation. I therefore annul the decision of the lower court, and remand the case in order that measures may be taken to ascertain on the spot what the two kitahs designated Chutterputtee Khunda and Duchnee Khunda are, of which Kokil Chund and Jeun Mahtoon, petitioned to be allowed to engage, and of which, as above remarked, the plaintiff has an undoubted right. This done, the moonsiff will decide the case *de novo*. The stamp for the appeal is to be refunded in the usual manner.

THE 18TH FEBRUARY 1850.

No. 161 of 1848.

Appeal against the decision of Sheikh Kusim Alli, former Additional Moonsiff of Gya, dated 15th July 1848.

Haim Raj, (Defendant,) Appellant,

versus

Bukhoree Saho, (Plaintiff,) Respondent.

THIS suit was instituted on the 27th March 1848, to recover the sum of rupees 11-6-6, principal and interest of the unpaid balance of an instalment bond for 12 rupees, executed by the defendant in favor of the plaintiff.

The defendant admits the execution of the bond, but pleads that he only received 7 rupees out of the amount of it; that what he received he repaid; and that the bond conditions for the payment of illegal interest, and as such, is opposed to Regulation XV. of 1793.

The moonsiff decreed the claim observing that the defendant adduced no proof of his alleged payment.

JUDGMENT.

The bond stipulates for illegal interest, which is therefore forfeited; the decree of the lower court is accordingly amended, and costs in proportion.

THE 19TH FEBRUARY 1850.

No. 167 of 1848.

Appeal against the decision of Syud Tuffuzzul Hossein Khan, Moonsiff of Gya, dated 11th August 1848.

Gobind Pandey, (Plaintiff,) Appellant,

versus

Shew Sahae Dass, (Defendant,) Respondent.

THIS suit was instituted on the 11th November 1846, to contest an illegal distraint. Suit valued at rupees 101-8-6.

The plaint sets forth that the defendant, calling himself the proprietor of 5 beegahs of land near Panchaitee Akharah, in the town of Gya, attached the property of the plaintiff for alleged arrears of rent on account of 1 beegah 15 dhoores of land, to the amount of rupees 101-8-6. The plaintiff sues to reverse that attachment pleading, that the attachment was for arrears due more than one year; that the demand made was for the single year of 1254 F., but yet the jumma-wasil-bakee contained thirteen months kist; that the plaintiff only holds 10 cottahs of land, which has been in his possession for years on a rent of 4 rupees. On these grounds, he contends that the attachment ought to be set aside.

The defendant, in his answer, affirms that the land in and near the city never pays a less rent than 2 rupees per biswa; and that it will be ascertained on measurement, whether the plaintiff holds the quantity of land stated in the jumma-wasil-bakee or not.

The moonsiff remarks that, according to the plaintiff's desire, he went himself on the ground and had the plaintiff's holding measured before him, when the quantity of land in his possession was ascertained to be 14 biswas. Allowing therefore the defendant's rate of assessment of rupees 2-4 per biswa to be fair, the moonsiff upholds the attachment for rupees 31-8, and costs in proportion, and sets aside the defendant's claim for the remainder.

Against this the plaintiff appeals, urging the same grounds as those contained in the plaint.

JUDGMENT.

The attachment is in reality designed to enforce an increased rate of assessment, over what the appellant (plaintiff) has been in the habit of paying in former years. Whether such a course is the proper one, under the circumstances, it is not now necessary to consider, as the attachment, for whatever purpose resorted to; cannot

stand. The demand, it is clear, was excessive in the extreme, whether the rent be taken to be what the plaintiff asserts he has usually paid, or whether it be the sum allowed by the moonsiff, as a fair assessment. This is ground enough to set it aside; besides which, the demand comprising thirteen months kist in one year was illegal and the quantity of land on which the defendant claimed rent was not much more than one-third the quantity stated to be in possession of the plaintiff. The attachment was therefore excessive, unjust, and illegal, and as such ought to have been set aside altogether instead of only in part. I reverse the decision of the lower court on the above grounds, and decree the appeal, with costs against the respondent.

THE 19TH FEBRUARY 1850.

No. 178 of 1848.

Appeal against the decision of Syud Tuffuzzul'Hossein Khan, Moonsiff of Gya, dated 11th August 1848.

Meghoo Rae, (Plaintiff,) Appellant,

versus

Shew Sahae Dass, (Defendant,) Respondent.

THIS suit, instituted on the 11th November 1847, is against a similar attachment and by the same party, as in the suit No. 167 this day decided. The defendant, in the present case, attached the plaintiff's property to the amount of rupees 55-2 for alleged arrears of rent for 1255 F., on account of 19 biswas of land. The plaintiff pleads that he holds but 10 biswas, for which he regularly paid to the defendant's predecessor, a yearly rent of 4 rupees. The defendant contends, that land in the city rents for rupees 2-4 per biswa, at which rate he has a right to demand rent from the plaintiffs.

The moonsiff, as in the case before mentioned, went himself to the spot, measured the land, and found 13 biswas in the plaintiff's occupation; on which, allowing the defendant's rate of assessment, he upholds the attachment to the extent of rupees 29-4, and costs in proportion, and sets aside the attachment for the remainder of the claim.

JUDGMENT.

The attachment, like the one in No. 167, (in which the defendant is the same as in this case,) appears to have been resorted to as the quickest and readiest way of compelling the plaintiff, the alleged defaulter, to come into the defendant's terms in regard to the amount of his assessment. That amount is objected to by the plaintiff, and is, according to his statement, nearly fourteen times over and above the amount he has been in the habit of paying as rent for his land. The regulations authorize an attachment for arrears certainly; but it is absurd to suppose that they empower a landlord to attach the

property of his under-tenant to any amount he pleases; an attachment can only be considered legal when (as in a summary suit for rent) the amount claimed is the same as what the tenure has paid in former years. When a new or enhanced demand is made, the regulations prescribe that the tenant be served with a notice, &c. In the present case, no such notice or intimation of an intention on the defendant's part to raise the rents was communicated to the plaintiff, but the defendant proceeds to an attachment claiming fourteen times the amount stated by the plaintiff to have been the regular rent of his lands. Under such circumstances, the attachment cannot, in my opinion, be upheld, and I accordingly reverse the decision of the lower court, decreeing the appeal, with costs against the respondent.

THE 21ST FEBRUARY 1850.

No. 196 of 1848.

Appeal against the decision of Moulvee Syud Hummeedooddeen Ahmud, Moonsiff of Aurungabad, dated 9th November 1848.

Bishnath, son of Jeeb Lal Singh, (Defendant,) Appellant,

versus

Hurnam Singh and Davee Lal, (Plaintiffs,) Respondents.

THIS suit was instituted on the 8th January 1848, by the plaintiffs, to contest an illegal attachment of their property made by the defendant for alleged arrears of rent of 1255 F., amounting to rupees 74-3-9, the plaintiffs pleading among other grounds that the attachment was illegal, as they had not been served with a jumma-wasil-bakee account either previous to or at the time of the distraint.

The defendant, in his answer, pleaded that the plaintiffs were in arrears, and that the attachment was just; but he took no notice of the objection to the legality of the attachment advanced by the plaintiffs.

The moonsiff decreed the suit in favor of the plaintiffs, declaring that the attachment was illegal on the ground that no jumma-wasil-bakee was furnished to the plaintiffs prior to or at the time of the attachment of their property, as required by Section 13, Regulation V. of 1812; and this decision being correct in point of fact, and agreeable to the letter of the Regulation cited, I hereby confirm it, and dismiss this appeal, with costs.

THE 22ND FEBRUARY 1850.

No. 197 of 1848.

Appeal against the decision of Syud Tuffuzul Hossein Khan, Moonsiff of Gya, dated 18th September 1848.

Morad Khan, (Defendant,) Appellant,

versus

Sheikh Basir Alli, (Plaintiff,) Respondent.

THIS suit was instituted on the 11th January 1848, to recover the sum of rupees 214, the principal and interest of a note of hand, dated 21st Zilhij 1255 F.

The plaintiff states that the defendant, on the date above given, borrowed of him rupees 211, for two days, in order to pay the amount of a decree against him, in the hands of Meer Ahmud Alli, and he gave a note of hand for it, the amount of which the plaintiff now seeks to recover with interest.

The defendant denies the debt and the execution of the note of hand. He pleads that the suit is brought at the instigation of Meer Ahmud Alli and Fuzzul Imam Hossein, with whom the defendant is on bad terms, having had frequent quarrels with them, which have constantly led them into the criminal courts; when the above parties not having been able to do any injury to the defendant, they have resorted to this fictitious suit for that purpose. As for the plaintiff, the defendant knows no such person, and as to the execution of the note, the defendant was 25 koss off from the place where it is alleged the money was borrowed, on the date borne on the note; besides if the transaction was true, that note would have been written on a stamp paper, and the defendant would have been required to put his seal to it: lastly, as to the purpose for which the money is said to have been borrowed, the defendant denies that Meer Ahmud Alli ever had a decree out against him, nor does the defendant know such a person.

The moonsiff observes that, letting it be as the defendant says that there is enmity between him and the parties named, nothing has been proved to shew the plaintiff's connection with those parties; that from the inspection of certain papers filed by the plaintiff, relating to the case of Mr. Elly *versus* the defendant, he then pleaded the same thing as the origin of that suit; so that it would seem this was his usual practice to escape from his liabilities. As the plaintiff's witnesses had proved the debt, and the defendant's witnesses were contradictory, and as the defendant would not deny the debt on oath, (the plaintiff being willing that the case should be so decided,) the moonsiff considered the debt a just one, and accordingly decreed the claim.

In appeal, it is pleaded that the evidence on the part of the plaintiff proved that the note was not in the defendant's handwriting, and

that his own statement was fully made out by the evidence on his side.

JUDGMENT.

That the defendant borrowed the money, and that he gave a note for the amount is fully proved. Whether he himself wrote that note with his own hand is no matter; he gave it as his acknowledgment, and that is enough. Such being my opinion, I confirm the decision of the lower court, and dismiss this appeal, with costs.

THE 23RD FEBRUARY 1850.

No. 171 of 1848.

Appeal against the decision of Moulvee Mahomud Abdool Luteef, former Acting Moonsiff of Jehanabad, dated 13th August 1848.

Doorbeejeey Singh, (Plaintiff,) Appellant,

versus

Meer Koorshaid Alli and Meer Reazut Alli, (Defendants,) Respondents.

THIS suit was instituted on the 23rd March 1848, to reverse a collusive decree, passed by the moonsiff of Jehanabad, dated the 12th December 1846.

The plaint sets forth that the village of Saadutpoor Bhuddur was purchased by the plaintiff in his own name, at a sale for arrears of revenue, held at the office of the collector of Behar, on the 30th July 1842; and that, after the payment of the full purchase money, the plaintiff was put into possession of the estate. Being on terms of great intimacy with Meer Koorshaid Alli and Moonshee Ameer Alli, on account of their joint purchase together of mehal Pakur Deeh Mulleeharee, the plaintiff deposited the papers relating to his estate of Saadutpoor Bhuddur with Koorshaid Alli, and giving him charge of his share of the collections of Pakur Deeh Mulleeharee, the plaintiff himself proceeded to Calcutta, to look after a case in appeal before the Sudder Court, in respect to the sale of the last mentioned property, brought by the former proprietors. While in Calcutta, the plaintiff heard that the defendant Koorshaid Alli, having brought two suits for arrears of rent against Meer Reazut Alli and Meer Dumree, in which he styled himself the proprietor and purchaser of Saadutpoor Bhuddur, got those persons to confess judgment, and the moonsiff of Jehanabad, before whom those cases were brought, accordingly decreed both cases in his favor, within seventeen days from the date of their institution. The plaintiff wrote the particulars of this iniquitous affair to the judge, and his son also stated them in a petition, when he was referred to the civil court in a regular suit, if he desired to have the decrees for rent reversed. The plaintiff accordingly brings this suit to reverse the decree

against Meer Reazut Alli; and he has instituted a separate one in the case of Meer Dumree.

Khoorshaid Alli makes answer that the plaintiff has no concern or interest in the village of Saadutpoor Bhuddur, nor did he provide the money for which it was purchased, nor was he ever in possession. The fact is that defendant bought the village in the name of the plaintiff, fearing to do so in his own name, because his wife's brother had a share in it. Hazareelal mookhtear paid the purchase money on the part of the defendant, since which time the defendant's umlah have been engaged on his part making the collections; that defendant is in possession can be proved from the village papers, by the measurement of the revenue survey, and by several dakhillas for revenue; that as to the suits for rent decided in his favor, the parties confessed judgment, because the claim of the plaintiff was just, and not because there was any fraudulent compact between the parties.

Meer Reazut Alli makes no answer.

The moonsiff remarks that the possession of the defendant is proved by the evidence of his witnesses, who are the cultivators; also by the depositions of the sudder ameen, the additional moonsiff, and the umlah and vakeels of the courts; that as to the evidence of the plaintiff with respect to his possession, his witnesses are not to be credited; and that, until he brings a regular suit to establish his right of possession, he cannot be heard in a matter of the nature now preferred by him. The moonsiff accordingly dismisses his suit.

JUDGMENT.

The rightful owner of the estate, in the eye of the law, is the certified purchaser. To award the rents of his estate to any other party is to give him what he has no title to. On this ground, the decrees for rent were improper, and as there is every indication that they were obtained collusively, I reverse the order of the lower court, and decree this appeal, with costs, declaring the decrees for rent obtained by the respondent to be null and void.

THE 23RD FEBRUARY 1850.

No. 172 of 1848.

Appeal against the decision of Moulvee Mahomud Abdool Luteef, former Acting Moonsiff of Jehanabad, dated 13th August 1848.

Doorbeeje Singh, (Plaintiff,) Appellant,

versus

Meer Khoorshaid Alli and Meer Dumree, (Defendants,) Respondents.

THE particulars of this case are exactly similar to those already recorded in the previous suit, and it is therefore unnecessary to repeat them. The like order is applicable, and it is therefore, ordered, that this appeal be decreed, with costs, a copy of the judgment in suit 171 being placed with the record.

THE 23RD FEBRUARY 1850.

No. 180 of 1848.

Appeal against the decision of Sheikh Kasim Alli, former Additional Moonsiff of Gya, dated 9th August 1848.

Gujjadhur Rae, Beeroo Pandey, and Muhadeo Pandey, (Defendants,) Appellants,

Teelooke Pandey, (Plaintiff,) Respondent.

THIS suit was instituted on the 11th March 1848, to recover rupees 150, being a moiety of the estimated collections on account of jujmanka fees from residents in Gya and other places, made from Assin 1254 to Maugh 1255 F.

The plaint sets forth that the plaintiff and one Ticca Pandey were the priests for the performance of certain religious ceremonies and rights, in the places above mentioned; the proceeds obtained from which were divisible, in equal parts, between the above named parties. Ticca Pandey having died, he was succeeded by Beeroo Pandey and Jankce Pandey, whose interests being put up to sale, on account of a decree, Gujjadhur Rae purchased it. Beeroo Pandey was, however, retained to conduct the religious duties called for, the plaintiff and Gujjadhur dividing the proceeds, but since the time stated in plaint Beeroo Pandey has withheld the payment of the plaintiff's share of the collections, and the plaintiff is consequently obliged to sue him for it in conjunction with the other defendants.

The defendants make answer that the suit ought to be dismissed, as the plaintiff does not give the names of the several parties from whom the alleged collections were made, nor does he say how much was collected from each; that so far from the defendants having appropriated more than their share, the plaintiff has received certain sums of which he has paid no part to the defendants, and for which they have brought an action against him which is now pending.

The moonsiff decreed the claim, remarking that no objection had been made, that the amount claimed had not been collected, and the defendants had adduced no proof in support of their statements.

JUDGMENT.

The investigation is incomplete. Some attempt should have been made to ascertain, what the amount (during the period) on account of jujmanka fees was, and whether the plaintiff (as alleged by the defendants) did or did not make certain collections, of which he has rendered no account and given no portion to the defendants. I remand the case that this may be done, when the lower court will decide the suit *de novo*. The value of the stamp for the appeal will be refunded to the appellant in the usual manner.

THE 23RD FEBRUARY 1850.

No. 181 of 1848.

Appeal against the decision of Sheikh Kusim Alli, former Additional Moonsiff of Gya, dated 9th August 1848.

Gujjadhur Rae, (Plaintiff,) Appellant,

versus

Teelooke Pandey, (Defendant,) Respondent.

THIS suit being the counter one to the preceding one, which has this day been remanded for further enquiry, it is necessary that this suit be sent back too. Ordered accordingly, the value of the stamp for appeal being refunded in the usual manner.

ZILLAH EAST BURDWAN.

PRESENT: JAMES ALEXANDER, ESQ., OFFICIATING JUDGE.

THE 5TH FEBRUARY 1850.

Case No. 30 of 1849.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 29th June 1849.

Suroop Chunder Mullick, (Defendant,) Appellant,

versus

Kureem-on-nissa Beebee, Mohes Chunder Chowdry, (Plaintiffs,) and Moonshee Mahomed Mozuffer and others, (Defendants,) Respondents.

PLAINTIFF sued to recover a sum adjudged under a collusive decree for rent for the year 1253, obtained by the first defendant Moonshee Mohammed Mozuffer and others against the last named defendants, Suroop Chunder Mullick and others.

The plaintiff asserts that in the year 1220^{*} her ancestor, Essina Beebee, bought beegahs 61-13, bearing a jumma of rupees 31-10 annas in mehal Kusagaon from one Ramkaunt Ghose: this jumma passed in free gift to Mariam-on-nissa, and from Mariam-on-nissa to the plaintiff. The land thus purchased and conveyed in gift was let in lease to Suroop Chunder Mullick and Bhyrub Chunder Mullick, who renewed their acknowledgments on the accession of each donee in the year 1253; the lease of these parties expired, and the land was let to Mohes Chunder Chowdry; a collusive suit was then got up between the former lessee and the zemindar of the village, and a decree was obtained in favor of the latter.

It appears from the inspection of the record that the case of the plaintiff is fully supported by all the documents on which she relies: she has failed to file the deeds of gift by which the holding in question descended from the first occupant to herself; but the question of her occupancy in succession to Essina and Mariam-on-nissa has never been raised: there is ample and sufficient proof that Ramkaunt Ghose sold the land to Essina Beebee: although the title of the vendor is impugned by the appellants, who set up a title of their own, yet the assertions made, whether in support of their own title or in impugning the plaintiff's, are unsupported by documentary evidence, and are in themselves too frivolous to require notice.

There is sufficient proof that Surroop Chunder was a lessee under the plaintiffs, and there can be little doubt that the plaintiffs were in full possession up to the year 1253. The decree obtained by the respondents appears entirely collusive, and the sudder ameen has exercised a right judgment in decreeing the recovery of the sums adjudged under it. The only tangible ground of appeal is that the deed of gift by which the holding passed into the hands of the present plaintiff, is not in the record. As the original conveyance to the plaintiff's ancestors and predecessors and her own subsequent occupancy are clearly proven, and her succession is not disputed, it is not necessary to insist on the production of this document.

ORDERED,

That the appeal be dismissed.

THE 7TH FEBRUARY 1850.

Case No. 31 of 1849.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 28th June 1849.

Ramdhun Ghose and others, (Defendants,) Appellants,

versus

Mr. Rooke, (Plaintiff,) Respondent.

PLAINT for a sum of rupees 495, principal and interest due on a bond, dated 16th November 1847.

The defendant (appellant) admitted the existence of the bond, but pleaded that it was executed under duress. He puts in as evidence certain proceedings from the criminal court, from which it appears that, six days after the alleged execution of the bond, he brought an action for assault and duress in the criminal court; that the assistant magistrate, considering his plaint false, sentenced him to imprisonment, that on appeal from this decision the judge recorded his opinion "that the assault was to a certain extent (eiknow) proven, that the assistant magistrate had shewn no sufficient grounds for his assumption that the plaint was false, that the court did not investigate the question as to whether the bond was properly taken or not."

The plaintiff (respondent) brought an action on the bond. The sudder ameen, discrediting evidence to the alleged duress, gave a decree in favor of the holder of the bond. Against this decree the present appeal has been brought.

JUDGMENT.

The sudder ameen discredits the evidence regarding the alleged duress, because he considers that the principal witness to the assault and imprisonment, Hurgobind, was not to be trusted, because the plaintiff was at that time prosecuting him in another case

in the criminal court. A very material fact is here misstated. The prosecution in the criminal court was not undertaken until three months after the evidence of Hurgobind in this case had been taken; it is evident that the latter prosecution grew out of the former, for the plaintiff, although he had taken a bond from the defendant for a debt arising out of the alleged non-performance of a contract, still endeavoured to enforce the performance of that contract by a suit under Regulation VII. 1819: in this suit he also included Hurgobind, a chuprassie, whom he considered culpably negligent. This statement of facts completely alters their bearing on the credibility of the witness. His evidence as to the illtreatment of the appellant (defendant) is clear; there is also other evidence which clearly bears out the opinion of the session judge that the assault was to a certain extent proven. The sudder ameen has confined himself to this point: having arrived at an opinion the reverse of that of the session judge, he has pronounced the bond to be a good and valid instrument: where, however, an assault has been proven, the evidence to the detention and imprisonment will be more readily admitted. The case of duress appears to have been established. The decision of the sudder ameen cannot be upheld. Further inquiry as to whether the bond was duly taken appears unnecessary.

ORDERED,

That the decision of the sudder ameen be reversed

THE 7TH FEBRUARY 1850.

Case No. 32 of 1849.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 20th July 1849.

Dhun Koond and others, (Defendants,) Appellants,
versus

Chummun Singh and others, (Plaintiffs,) Respondents.

SUIT for the recovery of rupees 697, deposited in trust with the defendants.

It appears that at a local court held by the sudder ameen on the 14th of July, the parties agreed to certain conditions under which a suit for 697 rupees was to be compromised by the payment of rupees 425 by instalments, and promised to execute a deed containing the same on the 16th July. Being called on the 20th, in pursuance of their agreement, to complete their bond, the plaintiffs (respondents) objected to sign the deed unless one Raja Ram was made witness to it; the defendants were called on to produce this witness, but declared their inability to do so. On the same day the sudder ameen drew up a roobukaree, decreeing the sum claimed, according to some of the conditions recorded in the first proceeding of the local court, but altering the others to the prejudice of the defendants (appellants,) who were called on to pay the whole

amount decreed at once, instead of by instalments as at first agreed on; he also decreed costs in opposition to the original agreement. The sudder ameen assigned as his reason for this change, that the defendants had failed to produce a witness, whom they had promised to bring forward, and whose signature the plaintiffs (respondents) declared to be necessary to the efficiency of the bond.

JUDGMENT.

In the first proceedings there was no condition as to the presence of the witness for whose signature the plaintiffs subsequently stipulated: it was not competent to the sudder ameen to alter the terms of an agreement equally binding on both parties, or to impose the new condition regarding his signature on the defendants: although the sudder ameen notices some subsequent verbal undertaking on the part of their vakeels to produce this witness, yet in the only proceeding on this subject, which was reduced to writing, it is recorded that the vakeels of the appellants pleaded their inability to enforce the attendance of this witness.

ORDERED,

That the sudder ameen be directed to decree strictly according to the terms agreed on by the parties themselves, with permission to the decreeholder to take out execution for the whole amount of his decree should the defendant fail to make good any instalment as it may fall due.

THE 15TH FEBRUARY 1850.

Case No. 18 of 1849.

Appeal from the decision of Moonshee Mahomed Sayem, Sudder Ameen of Burdwan, dated the 30th May 1849.

Radha Peearee Debya and others, (Defendants,) Appellants,

versus

Hullothur Ghose, (Plaintiff,) Respondent.

In this case Radha Peearee Debya and others, having been sold out of talooq Radha Nugghur, brought to sale a sub-tenure in it for the realization of arrears of revenue which had fallen due during the period of their possession of the talooq, and for which they had obtained a decree in the principal sudder ameen's court; but of which they did not take out execution until two years after the sale of the parent talooq. Previous to the sale the plaintiff, the present respondent, had objected that there was no such tenure as could be made subject to sale. This objection having been made in two zillahs, Hooghly and Burdwan, was admitted in one and rejected in the other, but was finally rejected by the Sudder; the sale was effected, and the suit, now under review, was brought to set it aside on the plea that no salable rights existed. It is pleaded on the part of the defendants that there was formerly a jumma known as that of

Pran Hurree Gosain, and that of this jumma a share paying a yearly rent of thirty-six rupees was in possession of the parties against whom the decree before the principal sudder ameen had been obtained.

It was incumbent on these claimants to prove satisfactorily the former existence of the jumma, the regular payment of the rent, and the possession of the jummadars or jotedars at the time of sale.

The former holders of the tenure have not come forward themselves.

The documentary evidence to the existence of the tenure is a notice of it in some butwarah papers prepared in 1205, but these are not a good and sufficient record. The defendants rely chiefly, for the establishment of their claim, on the production of certain decrees, which they had on various occasions obtained against the parties holding the jumma: these latter merely shew that the tenants of the land were allowed to hold at the same rent; but they do not shew that they had any such title to hold at that rate as would constitute a transferable tenure. The very neglect to pay their rents until they were levied under a decree would at once put an end to any title based on prescription. On the part of the purchasers at the sale it is shewn that the holders of the tenure had on various occasions styled themselves talooqdars, and they (the purchasers) instance the fact of tenants having abandoned their holding on the occurrence of the sale of the present talooq as a proof that they did not consider themselves possessed of any tenure that did not fall with the talooq itself: this is shewn to be the case. The sale of the putnee Radha Nuggur took place in 1250, the purchaser took possession of the lands of this disputed tenure in common with the rest of the property, and no attempt was made to disturb him until it was attached in 1252 in execution of a decree for outstanding arrears. The sudder smeen has decided that the defendants have not established the existence of any tenure such as is contemplated in Sections 18 and 19, Regulation VIII. of 1793, and Section 29, Regulation VII. 1793. I concur in this opinion, and therefore uphold his orders directing the reversal of the sale.

THE 16TH FEBRUARY 1850.

Case No. 257 of 1849.

Appeal from the decision of Kuzee Nazirooddeen, Moonsiff of Indoss, dated the 29th May 1849.

Aullodhur Singh, (Plaintiff,) Respondent,

versus

Ramsoonder Ghosal, and others, Defendants.

Parja Debya, Claimant, Appellant.

CLAIM, rupees 213-13-9.

The original case was for the assessment of 45 beegahs in Kanoo Battee.

Plaintiff sued first defendants and obtained a decree for resumption of the above land, which decree having been upheld by the judge, the plaintiff instituted a suit for the assessment of the rent. Parja Debya then stated that the plaintiff had measured certain lands of hers in his lot.

The moonsiff having admitted the claim, the judge sent the case back for investigation as to whether the land was included in the resumption decree or not, and "whether it be satisfactorily proved that it is in the possession of those who were no way concerned in the resumption suit." The moonsiff has given effect to the first part of these instructions, but has entirely neglected the others, but has decreed the case against the claimant on the sole ground of the lands having been in the resumption decree. The case must be returned to him to complete inquiries on the latter head also.

THE 19TH FEBRUARY 1850.

Case No. 261 of 1849.

Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan, dated the 11th June 1849.

Koochil Ayah, (Defendant,) Appellant,

versus

Imam Buksh, (Plaintiff,) Respondent.

IN the suit instituted before the city moonsiff, the plaintiff sued to recover possession of a cow, which had been given over to the defendant under Act IV. of 1840. The grounds of the plaint were that the cow had been bought with the defendant's money. Witnesses were brought forward by the defendant to prove that she had delivered to the plaintiff 12 rupees for the purchase of a cow in the month of Maugh. On the part of the plaintiff it was shewn that he purchased this cow in Poos. This point having been established by a reference to the books of the seller of the cow, the moonsiff considered that the defendant's case was not established, decreed against her.

The defendant, however, appeals on the ground that the reference to the books was irregularly made, and that the vendor was not himself summoned into court to prove them. The books were the regular accounts of a gentleman in trade, who made entry of it amongst his regular business transactions. Under these circumstances it does not appear necessary that the time of the courts should be further occupied with taking evidence to a fact already sufficiently proven.

The appeal is dismissed.

THE 20TH FEBRUARY 1850.

Case No. 262 of 1849.

Appeal from the decision of Kasee Nazirooddeen, Moonsiff of Indoss, dated the 28th May 1849.

Ram Mohun Bonnerjea and others, (Plaintiffs,) Appellants,

versus

Juggernath Roy and others, (Defendants,) Respondents.

THIS is a claim to assess 16 beegahs of land resumed under Section 30, Regulation II. of 1819.

The nankar lands of the former proprietors of pergunnah Bishenpore were, when that property came into the hands of the rajah of Burdwan, formed by him into one mehal called the Sunnaputtee mehal, which was let in putnee. The task of subjecting the lands to assessment was left to the putneedar. In pursuance of his right to assess these lands the putneedar brought a suit under Regulation II. of 1819, against the holders of 16 beegahs of Sunnaputtee land in mouzah Hanseepookur, in the above pergunnah. In this suit the defendant pleaded that the lands which he held in Hanseepookur were not part of the Sunnaputtee mehal, but of his own lakhiraj land held under a distinct sunnud.

The collector rejected the sunnud and declared the lands to be nankar. An action was then brought to assess these lands in execution of the above decree.

The moonsiff has dismissed the plaint, because the lands were resumed without having been defined and measured, and there is now no proof that the lands proposed to be subjected to assessment are the lands that were resumed. Although the position of the lands were not defined in the resumption decree, yet the nature and description of the lands is sufficiently explained: they were the lands of the Sunnaputtee mehal. The witnesses before the ameen deputed by the moonsiff depose that the lands now pointed out by the plaintiff are those of the Sunnaputtee mehal. If the evidence of these witnesses is worthy of credence, there is sufficient identification to warrant the treatment of these lands as those that were resumed as forming part of the Sunnaputtee mehal. The moonsiff does not notice this identification of the lands.

ORDERED,

That the case be sent back to the moonsiff to enquire more carefully whether the lands now pointed out by the plaintiff were generally known as those of the Sunnaputtee mehal. Should such prove to be the case, there can be no reason for not holding them to be identical with those declared liable to resumption under the collector's decree.

THE 21ST FEBRUARY 1850.

Case No. 263 of 1849.

*Appeal from the decision of Nobin Kisto Paulit, Moonsiff of Cutwah,
dated the 29th May 1849.*

Ram Chunder Mundul, (Defendant,) Appellant,

versus

Sheebo Soondree Debya, (Plaintiff,) Respondent.

THE plaint is on a bond for rupees 151: the instrument is duly attested: the defence is that the defendant was in the hospital at Burdwan, at the time of the alleged execution of the bond.

The moonsiff, having failed to obtain evidence in support of the defence, has decided in favor of the plaintiff. The defence, already supported by a certificate, admits of easy proof from the books of the hospital, and the evidence of the hospital attendants. The moonsiff has not made sufficient exertion to clear up this point. The case must be sent back to him with orders to examine the books of the hospital, and take the evidence of the hospital attendants, and then to decide the case.

THE 21ST FEBRUARY 1850.

Case No. 266 of 1849.

*Appeal from the decision of Tuffuzzool Ruhman, Moonsiff of Owsgong,
dated the 26th May 1849.*

Gokool Chunder Takoor and others, (Plaintiffs,) Appellants,

versus

Gholam Abed Khan, (Defendant,) Respondent.

THIS was a suit for the balance of rent in the years 1253 to 1254. The defendant produced a receipt for the detailed payments of 1253, but could not produce any for 1254; but there is evidence of payments made by assignments on the under-tenants, and also of an adjustment of accounts, up to the year 1254, between the defendant and plaintiffs' gomastah. The claim on the part of the plaintiffs was not established by the production of the usual village accounts. These were not forthcoming, having been carried off by their former gomastah who had left them. The moonsiff decreed a small balance of rupees 3, due on account of interest in favor of the plaintiffs. I see no reason for disturbing his decision.

THE 21ST FEBRUARY 1850.

Case No. 269 of 1849.

Appeal from the decision of Pearea Mohun Banerjea, Moonsiff of Kytes, dated the 7th June 1849.

Anund Moy Dutt, (Plaintiff,) Respondent,

versus

Kumul Digwar Dutt, (Defendant,) Appellant.

THE plaint was for rent for the year 1254. The defendant pleaded payment, but failed to produce the dakhilahs. The claim was established by the village accounts produced by the plaintiff. The moonsiff decreed in favor of the plaintiff. The grounds of appeal are that the defendant was not informed by his vakeel that the moonsiff had called for the dakhilahs. The grounds of appeal are insufficient. The moonsiff's order must stand.

THE 25TH FEBRUARY 1850.

Case No. 9 of 1849.

Appeal from the decision of Moulvee Fuzzul Rubbee, Principal Sudder Ameen of Burdwan, dated the 9th August 1849.

Purmanund Roy and others, (Defendants,) Respondents,

versus

Nubkishore Sircar and others, (Plaintiffs,) Respondents.

THIS was a suit to try the right of possession in an 11 annas share in a tank containing 3 beegahs, 16 cottahs, for the rent of which the defendants had obtained a collusive decree under Regulation V. of 1812.

The title set up by the plaintiffs is that the tank is included in their village of Bussuntpoor.

The title which the defendants propose to establish runs thus. As to one beegah, that it was an old tank conveyed as lakhiraj by Rajah Tiloke Chund to his consamah, Lukeekaunt Bandaree: as to 2 beegahs, 16 cottahs, that they were purchased by Lukeekaunt Bandaree from one Rammohun Chuckerbuttee, under date 9th Aughun 1176: that the whole 3 beegahs, 16 cottahs, having been excavated and formed into a tank, were sold by the heir of the aforesaid Bandaree, to one Byjnath Buksh under date 5th Maugh 1196: that Hurree Pershad Buksh, son of Byjnath Buksh, sold the same again to the present defendants under date 25th Bhadoon 1249. This title is supported by a lakhiraj sunnud conveying the tank to Lukeekaunt Bandaree: by the deed of sale under which Rammohun Chuckerbuttee and others sold 2 beegahs, 16 cottahs to the aforesaid Bandaree; by the deed of sale from the heir of Bandaree to Byjnath Buksh; and finally by the conveyance from Hurree Pershad Buksh, son of Byjnath Buksh, to the present defen-

dant. The sunnud has been very carefully examined by different authorities, the majority of whom have considered it to be a forgery. I have very little doubt that it is a fabrication. The deed of sale of the 2 beegahs, 16 cottahs has been rejected by the principal sudder ameen, because it has been proved by irrefragable evidence that Abhie Churn, whose name is subscribed as a shareholder and vendor of his own share, was not alive at the time of the sale. On the part of the plaintiffs it has been proved that the tank was measured as constituting part of the village of Bussuntpoor, in the year 1231. On these grounds the principal sudder ameen has decided against the claim of the defendants, and decreed possession of the tanks to the plaintiffs.

It will be observed that, between the sale of the tank to Byjnath Buksh in 1196, and the purchase of it by the present defendant in 1249, a period of fifty-three years elapsed. There is no attempt to prove any act or sign of possession on the part of the lakhirajdar during all this interval: on the other hand it is shewn that the land was during that period on more than one occasion dealt with as part of the village of Bussuntpoor. There is but little doubt on my mind that the tank once belonged to the lakhirajdars, but was taken possession of by the talookdars, of whom the defendant himself was one, but who has now endeavoured to revive the title of the lakhirajdars by way of obtaining possession of the whole tank.

By the use of fabricated documents he has very nearly brought himself within the reach of the criminal law. His appeal must be dismissed, with costs.

ZILLAH WEST BURDWAN.

PRESENT: HENRY C. HAMILTON, ESQ., OFFICIATING JUDGE.

THE 4TH FEBRUARY 1850.

Case No. 95 of 1848.

Appeal from the decision of Baboo Gopeekishen Banerjee, Moonsiff of Kotulpoor, dated 26th February 1848.

Bungsheedhur Dey, (Plaintiff,) Respondent,

versus

Kishen Sain and Sadoochurn Sain, (Defendants,) Appellants.

SUIT to assess beegahs 20-15 of resumed lakhiraj land in Rugho-nath bazar at rupees 46-2-10 per annum from 1254 B. S.

Plaintiff, styling himself the durputneedar of lot Juggernatpoor, states that his predecessor Gopeenath sued for the resumption of these lands, and obtained a decree in his favor for five parcels on the 23rd July 1845. Defendants appealed; and plaintiff, having become the durputneedar by private purchase on the 23rd Sawun 1252 B. S., carried on the appeal: eventually it was decreed in his favor by the civil court on the 28th of March 1847, and he was declared at liberty to assess the lands: notices were served in Bysack 1254 B. S. on defendants, but as they did not appear, plaintiff now assessed the land as above, and sues them for its revenue.

Defendants replied by objecting to the area as set forth by plaintiff, and to the jumma proposed as being excessive; they denied also plaintiff's power to assess, as he was only the durputneedar by private purchase.

There were three objectors to certain portions of the land specified in the plaint.

The moonsiff says that the right to assess having been already decided, he deputed an ameen to measure and fix the proper rates; but as both parties objected, he went himself to the spot, and both sides having agreed to the area at beegahs 12-13-14, he deducted 11 cot-tahs to which too no person objected, and plaintiff having filed the pergunnah rates of the late Mr. Keating for the land, and none having been forthcoming for the tanks and orchards, he assessed them (paying due regard to their capabilities) to the best of his judgment,

and having overruled the claims of the objectors he calculated the area as follows :—

	bgs. c. d.	bgs. c. d.
Cultivated &c. land, 3 16 11 10,	} 12 2 14	
4 tanks, 8 6 2 10,		

and he fixed his assessment thereupon at rupees 14-1-10 per annum from 1254 B. S., decreeing it accordingly in plaintiff's favor.

In appeal, defendants object to the nirik fixed for the tanks and orchards, and urge that a small parcel of land should also have been deducted by the moonsiff.

I consider the lower court has very carefully revised the rates not only for the land but for the tanks and orchards. The moonsiff took Mr. Keating's rates for his guide as far as they were practicable and forthcoming, and where it was otherwise he was most fair in fixing them, and they are, if any thing, low. Under these circumstances, and as no good grounds have been advanced by the appellants for interfering with the decree of the lower court, I hereby confirm it, rejecting the appeal, with costs.

THE 9TH FEBRUARY 1850.

Case No. 108 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanuggur, dated 22nd February 1848.

Kasheenath Roy, Plaintiff,

versus

Juggurnath Ghose and others, (Defendants,) Appellants. •

SUIT for possession of 3 out of 18 beegahs of land in two parcels, purchased by plaintiff in execution of a decree, situated in mouzah Boorooj, appertaining to lot Dewanbarah, with wassilant from 1245 to 1253 B. S., laid at rupees 139-12.

This case was instituted in the Bishenpore moonsiff's court, but as plaintiff was a vakeel attached thereto, it was transferred to this chowkee.

Plaintiff states that he purchased as above, in execution of a decree No. 628, Salagram Ghose's jumayee rights in 18 beegahs with a jumma of rupees 54-4. This land, together with 4 beegahs of lakhiraj, belonging to Muddun Ghose, and 4 beegahs belonging to Ram Chand Thakoor, were attached. Juggurnath and others bought Muddun's lakhiraj, but the sale was reversed, and a fresh sale held on the 22nd March 1837, when he became the purchaser for rupees 101 of the whole 26 beegahs. He continued in possession up to 1244 B. S. and in 1245 B. S., Juggurnath Ghose defendant preferred a miscellaneous appeal to the judge, urging that he had purchased Muddun's land, and that the sale had been confirmed, and under this plea he dispossessed him, plaintiff, of 3 beegahs in two parcels, one of

beegahs 1-5, and the other of beegahs 1-15, (during the month of Assar,) in part of his 22 beegahs. Plaintiff therefore sues for possession, wasilat, &c.

Juggurnath Ghose replies that the claim is false: that plaintiff has confounded the lands, and his claim was admitted for 4 beegahs, and the sale upheld. Plaintiff has taken one beegah and one cottah of his (defendant's) land calling it his khureedeh, although it is excluded from the boundaries referred to in decree No. 6494, in which the maliks of Dewanbarah sued Salagram, whose rights plaintiff has purchased, and in which his 4 beegahs will be found to be quite distinct by examining the measurement papers. The parcel of beegahs 1-15 called by plaintiff Kulya Dangeh is not so, but adjoins his, defendant's, land, covering an area of beegahs 3-5, which for years lay waste, and for which, including a tank called Kulliah, he, defendant, obtained a pottah from the former maliks of Dewanbarah, on the 20th of Maugh 1248 B. S., with a jumma of 12 annas. Plaintiff has confounded the boundaries, and wishes to usurp this parcel under the above name and 4 cottahs, cultivable land, in part of his pottah aforementioned, as also one beegah and one cottah of Muddun's lakhiraj of 4 beegahs.

Nubgopal Mozoomdar, talookdar of Dewanbarah, denies that Juggurnath Ghose defendant obtained a pottah for beegahs 3-5: he urges that he holds no mal land in Dewanbarah, and that the land in dispute belongs to plaintiff's khureedeh.

Muddun Ghose and other defendants reply that Juggurnath Ghose does not hold one beegah and one cottah in part of their lakhiraj of 4 beegahs, but that it belongs to plaintiff's khureedeh.

None of the other defendants reply.

The moonsiff states that in the first instance he called upon plaintiff to deposit an ameen's fees, but subsequently he did not think it was necessary, and plaintiff further demurred to the deputation of one. He does not believe Juggurnath Ghose defendant's statement, because he advanced that he had obtained a pottah from Loll Mohun Bannerjea, whereas the one produced is from Ram Mohun; besides which Nubgopal defendant, talookdar, denies that he holds any mal land as asserted. With respect to the lakhiraj land, it also appeared that Muddun and Seesthedur defendants repudiated the possession of any portion of it by Juggurnath. After this the chittahs of suit No. 6494 were called for, but not produced, and as Nubgopal Mozoomdar, talookdar of Dewanbarah, and Muddun Ghose, lakhirajdar, denied Juggurnath Ghose's possession; and as it was not likely that the maliks would willingly bring loss upon themselves, he, the moonsiff, did not see what benefit would arise from the deputation of an ameen, and plaintiff having proved that the disputed land belonged to his "khureedeh" by witnesses, as well as by the certificate of sale or byenamah produced by him, he decreed the case in his favor, with wasilat, &c.

Juggurnath, defendant, appeals by saying that plaintiff has connived with the other defendants, and that he, if any thing, has come forward in support of their rights; secondly, that he only obtained copies of the measurement dags referred to in suit No. 6494 on the 22nd February 1848, and was unable to file them in time before the lower court; thirdly, he urges the necessity for a local enquiry by an ameen; fourthly, that two only of his witnesses were produced, the others having been out of the way, and as no ameen was deputed, he did not bring them forward; further, that there is a great discrepancy about 4 cottahs of land, which are stated to be noabad, between plaintiff's witnesses and his plaint, and that it is well known that Loll Mohun and Ram Mohun were brothers, and Ram Mohun is the recorded malik, while Loll Mohun was the manager, &c.

I have carefully gone through the case, and confess I cannot find any thing before me to shew what in reality is the land at issue. That there has been collusion between plaintiff and several of the defendants, is evident; and I do not see how the matter at issue can be satisfactorily decided until the lands are measured off, and compared with the dags produced by Juggurnath Ghose, defendant; for it is very evident that the boundaries of the lands claimed by plaintiff have been so confounded that it is difficult to say what they are. I consider, therefore, that the case is incomplete, and direct that it be remanded for trial *de novo* to the lower court, before whom it will be requisite for plaintiff to deposit the fees necessary for the deputation of an ameen, and defendant will in the first instance be required to point out the lands he claims, after which the case can proceed in the usual course. Under the foregoing circumstances, I decree the appeal, and the value of stamp paper must be refunded.

THE 9TH FEBRUARY 1850.

Case No. 112 of 1848.

Appeal from the decision of Moulvee Noorul Hossein, Moonsiff of Bishenpoor, dated 21st February, 1848.

Juggurnath Dhyebhye, Plaintiff,

versus

Suttrooghun Singh Baboo and others, heirs of Baboo Khettermohun Singh, (Defendants,) Appellants.

SUIT to keep open a watercourse, laid at rupees 15-8.

Plaintiff states that he holds a pottah for 8 beegahs of land called Khyra nullah from Rajah Gopal Singh, appertaining to Bishenpoor, and the water from the reservoir called Chowgan bund used to be carried by a nullah called "Khyra nullah" into a deep hollow named heer, and when there was an excess, it escaped into a large reservoir called "Lalbund," and he was in the habit of irrigating his fields from the water collected in the heer. During the month of Jyte

1249 B. S., Hurree Singh Baboo and others cut off the communication with the heer and plundered the fish, on which plaintiff petitioned in the magistrate's court; the baboo was fined, and the watercourse to the heer was directed to be kept open and repaired. This was done; but in the month Assar 1253 B. S., defendants threw a bund across the watercourse, and turned off the water towards their village Patpoor. Plaintiff therefore applies that the old channel to the heer may be kept open, and sues accordingly.

Baboo Suttooghun Singh, defendant, replies that plaintiff has produced no pottah nor stated when the land was cultivated, and that he wishes to make out he has obtained a pottah for these lands from Gopal Singh: he urges that the land was jungle, Muddun Daghuriah and others cleared it, and afterwards left it waste as no water was obtainable for its irrigation, and plaintiff has merely brought this action in the hope of keeping the passage for the water to his land open: he advances that the Chowgan bund belongs to him of old, and Rajah Gopal Singh has no interest therein; he receives his julkur therefrom from his ryots, Ramkishen and others, and plaintiff has no right thereto or to the water.

The moonsiff says that he sent an ameen, and that plaintiff produced his witnesses, but defendant brought his own to the court: after this he went himself to the spot, and it was clear to him that Chowgan bund belonged to the defendant, and that the Khyra nullah watercourse was current as of old, and though defendants had not actually closed it, they had stopped the passage for the turn off of the water towards plaintiff's heer, and though there might be enough water for irrigation purposes, still more than half of the watercourse was closed; besides this, and notwithstanding, plaintiff might irrigate his fields from the Lalbund which was close by, yet he is of opinion that both watercourses, one towards Patpoor and the other in the direction of plaintiff's heer, should be kept open. He therefore decrees that the half of the new bund which has been thrown up should be kept open by being removed for the passage of water to plaintiff's "heer," and plaintiff should receive his costs as set forth.

Suttooghun Singh Baboo, defendant, appeals by stating that the "Khyra nullah" has been proved to belong to him and the water to be carried to his mouzah Patpoor; and as such is the case how should he be answerable or wrong in closing up the channel as stated by plaintiff, as the bund is not in the Khyra nullah? He claims the heer as his, &c.

The appellant has not before claimed the "heer" as his; on the contrary, he has led one to suppose the very reverse was the case. Again, it is true that no bund has been thrown across the Khyra nullah, but the passage therefrom leading to plaintiff's heer, and just below its junction with the heer, has been dammed up, so that the water, as of old, cannot possibly reach its old position, and by

its not doing so, plaintiff's lands suffer from want of irrigation. There is a rough map with the nuthee which explains this very clearly; and as I consider defendant has no right to stop the waterway, I uphold the decision of the lower court, and reject the appeal, with costs.

THE 13TH FEBRUARY 1850.

Case No. 4 of 1848.

Appeal from the decision of the Deputy Collector of West Burdwan, dated the 14th September 1848.

Sreenath Roy, Plaintiff,

versus

Kartick Chatterjea, and on his demise, Sreeram Chatterjea and others, Ram Chatterjea and Gopal Chatterjea, (Defendants,) Appellants.

SUIT to resume and assess 32 beegahs of land held under an invalid tenure, laid at rupees 576, and instituted under Section 30, Regulation II. of 1819.

Plaintiff, styling himself the durputneedar of lot Kishtiah on the part of Muddoosoodun Shaka and others, states that defendants are in possession of 32 beegahs in mouzah Huttia Mowah under the pretence of its being lakhiraj; that he has called upon them to interchange pottahs and kuboolents, but they will not do so; he consequently sues them, giving the boundaries, &c. He adds too, that there is another parcel of land of 2 beegahs held at a low jumma, for which he purposes to bring a separate suit against defendants.

Kartick Chatterjea and Gopal, defendants, reply jointly to the effect that the lands called Cholaharee are not 32 but only 24 beegahs, of which 16½ beegahs belong to the burmuttur of Rughoonath Surmah in mouzah Ghattee, which their (defendants') father purchased from the heirs, and now they are together with Muggun in possession. The kubalah is not forthcoming, but they hold the char of Mr. A. Haselrigge in which the burmuttur will appear. Another parcel of land of 7½ beegahs lies within the boundaries set forth, and is the lakhiraj of Gudadhur Bhattacharj and others of Bishenpoor; their (defendants') father took it from the heirs at a jumma of rupees 4, and they now receive the rent. Plaintiff not having included the heirs of Gudadhur and others in this suit, it cannot be entertained. The 2 beegahs also claimed by plaintiff are in reality 4 beegahs, and the burmuttur of Ramdulal Mookerjea, and was released in case No. 388, &c.

Roopchand Surma, of mouzah Ghattee, comes forward by petition in support of the defendants, and files a char of Mr. Haselrigge for 16½ beegahs in Cholaharee.

Basur Chunder Chatterjea appears by petition in support of defendants, and says that plaintiff has altered the boundaries of the alleged 2 beegahs, &c.

Puddolochun Bundopadhya and Ram Churn side on behalf of plaintiff, and Doorgachurn Bhuttacharj opposes him.

After this an ameen was deputed; he prepared and submitted his report, and it appeared therefrom, as also by the witnesses of plaintiff, that defendants were in possession as set forth, and although Roopchand Surma had produced a char, dated Indoss the 27th February 1790 A. D., signed by Mr. Haselrigge, and though this char corresponded with the office register, still no original sunnud had been produced, and until this omission was supplied it was impossible to say whether it was granted anterior to the Company's accession to the Dewanny. Further, being of opinion that a tenure could not hold good simply on a char, and as no original sunnud had been produced, the deputy collector overruled defendants' objections, and decreed the case in plaintiff's favor.

The case was argued before my predecessor on the 27th June 1849, and a copy of the taidad and any precedents whereby a tenure had been declared valid simply on the production of a char were called for.

No taidad is forthcoming, and the precedent given is only a deputy collector's decision in another case, dated the 7th June 1845, which is by no means a parallel case, as a copy of the taidad was filed therein.

Ram Chatterjea and Gopal Chatterjea, two of the defendants, are appellants; they urge that through enmity plaintiff wishes to take possession of their khureedeh lakhiraj as his mal; that Mr. Haselrigge's char proves their title, and its genuineness has been proved by the deputy collector; that though the original sunnud may not have been produced, the original lakhirajdars were in occupancy long before the Company's accession to the Dewanny; and that mention is made of a char having been presented before Mr. Dawson in the char of Mr. Haselrigge, consequently they urge that their land is not open to resumption and assessment. They urge that plaintiff, in his jowab-ool-jowab, admits that their lakhiraj by name Cholabaree is elsewhere, and is not that in dispute; but their witnesses have proved their being in possession of the Cholabaree lands; and hence as their title is good, they are not liable to the payment of any revenue, and similar lands have been frequently released. Again, $7\frac{1}{2}$ beegahs belong to Gudadhur, and they (appellants) ought not to have been cast in costs with respect to this claim and the one for 2 beegahs.

JUDGMENT.

The plaintiff's claim to assess I consider to be valid. The defendants urge that they are in possession of the land in dispute by purchase some forty years ago or so, but they cannot shew how or when they purchased it. Secondly, they urge that Mr. Haselrigge's char is a valid title, and the land ought to be exempted from the payment of any revenue, as it proves possession antecedent to the Hon'ble Company's accession to the Dewanny, but this char is not unfortunately covered by any *taidad*, or does it appear that, from 1790 A. D.

to present date, either the original lakhirajdars, or their heirs, or even the purchasers or their heirs have ever once produced the char for the purposes of check or registry; hence the char is not, in my opinion, a good title, and the occupants are liable to be assessed, the fact of no registry having been effected and no transfer recorded in the office of the revenue authorities being sufficient to vitiate the document, however genuine it may otherwise be. Under the foregoing circumstances, I hereby uphold the decree of the deputy collector, and dismiss the appeal, with costs.

THE 13TH FEBRUARY 1850.

Case No. 1 of 1849.

Appeal from the decision of the Deputy Collector of Bancoorah, dated the 15th September 1848.

Ramjee Doss, (Plaintiff,) Respondent,

versus

Ramdhun Ghuttuk and others, Defendants.

Ramdhun Ghuttuk and Muggun Ghuttuk, (two of the Defendants,) Appellants.

SUIT to resume and assess beegahs 35-7-2 of land, held as lakhiraj under an invalid title, laid at rupees 1,594-9-4.

Plaintiff says that he was the purchaser of lot Balliah at the second half-yearly putnec sales in 1252 B. S., and obtained possession. In mouzah Balliah, Ramdhun, Muggun, and Ramessur, defendants, hold beegahs 10-13 of land as an hereditary burmuttur, to which plaintiff lays no claim, but besides this they have beegahs 35-7-2, in the same village, in no less than 33 parcels, as described under invalid tenures, being in reality their mal lands, and for this, as the defendants will not come to any settlement or pay any revenue, plaintiff has brought this action.

Ramdhun and Muggun, defendants, reply together to the effect that they jointly with other sharers hold beegahs 78-11-2 of land in Balliah and Balliah Chubra as burmuttur and deotur, and besides this they possess beegahs 10-13; they then enter into a long history of the shares held by them and the other defendants respectively as well as others who have not been sued as they ought to have been; they refer to a taidad, No. 32246, in the name of their common ancestor, also to lands which have been already released from assessment; and urge, as the other defendants hold all the proofs and documents, they are unable to produce them, as they have been bought over by the plaintiffs; they state that the land said to be comprised in parcels 1 to No. 31 is not beegahs 33-7-2 but beegahs 32-3-3, as their "chars" will shew, and that the parcels 32 and 33 for 2 beegahs have been from time immemorial deotur, that they are in possession according to their respective shares, and that

beegahs 10-13-0, alluded to by plaintiff, are in their possession as well as held by others. They conclude, that plaintiff has fraudulently brought this action against them.

Ramanund and two others, defendants, reply that plaintiff's statement about the beegahs 10-13 is false; they object to the "koorseenamah" and "hissanamah," say they hold possession as stated by defendants, but they make out plaintiff is right and defendants wrong, and that they have no concern with the 35 beegahs referred to by plaintiff, and are not in possession of any portion of it.

Radhanath Ghuttuck comes forward unasked to say that defendant Ramdhun has stated falsely that he holds beegahs 31-15 as lakhiraj in 3 parcels, and that defendants have no right to it. He produces the "koorseenamah."

Kartick Chunder Chatterjea, an objector, supports Ramdhun defendant.

In his jowab-ool-jowab plaintiff says that the defendants' statement is all false; he objects to the "koorseenamah," to the shares as specified, and urges that the land mentioned in his plaint is not *that* referred to by them, and that the proofs, documents, and "chars" they have produced, do not apply to *the* land in dispute.

The evidence of witnesses on both sides having been heard, and defendants having objected to the evidence of several of their own witnesses being taken as they had been brought over by the plaintiff, the following documents were filed :

Defendants filed a copy of a taidad covering beegahs 39-2.

Mr. Haselrigge's char, dated 24th Jeyte 1196 B. S., or 1790 A. D.

Three copies of a "rule bhye" or register.

Copy of a taidad No. 35229.

A fysalah dated 31st May 1831 of the court of the register of the jungulmohals was filed by plaintiffs, in which their "koorseenamahs" and "hissanamahs" are given.

Ramdoss filed a "char," dated 24th Jeyte 1196 B. S., signed by Mr. Haselrigge, and Mr. Dawson's "char," dated 1771, or 1177 B. S., 12th Falgoon.

Radhanath filed a char of Mr. Haselrigge's, dated 15th Bysack 1196 B. S.

Mr. Dawson's char dated 12th Falgoon 1177 B. S.

Mr. Haselrigge's char, dated 7th Jeyte 1197.

Sunnud 3rd Jeyte 1158 B. S., signed by Mr. Haselrigge.

Sunnud dated 27th Maugh 1155 B. S.

Special deputy collector's roobakaree, dated 26th June 1837.

The objectors were interrogated with respect to the land claimed by plaintiffs and that for which they had filed documents; they replied that the two were *quite distinct*. To a further question they stated that the lands referred to in the *copies* of the several chars, and to the documents which had been referred to by *defendants*, related to *their own lands*; that they held the *original documents*

and their lands were quite separate from defendants who had brought forward these *copies* as proofs of *their* lakhiraj; whereas the *originals* protected their (the objectors') titles, and if they, the objectors, had not appeared, (though they were no party to the action, and defendants had by any means obtained a decree,) they, the objectors, would have been seriously injured in their rights and titles. After various other interrogatories, the deputy collector observes that, although Ramdhun and Muggun, defendants, claim the disputed land as their mouroosee property, having descended to them from Anundeeram Bidyalunkar, and that the other defendants are their sharers, and produce chars, &c. in proof of their title, still it is evident from the documents filed by plaintiff and the other parties that these two defendants have agreed to the "koorseenamah;" that they are not the sharers, but that only the objectors, and the other defendants are so; that the latter have uninterruptedly retained possession and not the two defendants, Ramdhun and Muggun, whose land is separate, and for this separate land, or that in dispute, and referred to by plaintiff, no protecting chars or other proofs have been produced by these two defendants, who have been fraudulently endeavouring to claim a very distant connectionship, and in virtue of documents which do not belong to them to bring forward their right to certain shares in lands in the occupancy of others. Plaintiff, however, having proved that the lands in defendants' possession pertain to his *bonâ fide* mal talook, and no title to hold them rent-free having been established, he decrees the case against the three brothers, Ramdhun, Muggun, and Ramesshur.

In appeal, it is urged that the boundaries of the land have been so confounded and intermixed that a local enquiry should have been instituted. Appellants urge that all the sharers have not been made parties to the suit as they pleaded, but no notice was taken of it; that their documents shewing their land to be in Balliah Chabrah were filed; that plaintiff, being the talookdar, can produce any proofs or witnesses; that their lakhiraj has been unmolested for years anterior to the Honorable Company's accession to the Dewanny; that the zumeendar has not authorised the putneedar (plaintiff) to resume and assess the lands; that by referring to fysicalah No. 1067, the shares of every one will be clearly seen, and they urge that an ameen may be deputed to measure the lands, &c.

The point for decision is, whether the land from which plaintiff demands revenue is in the possession of defendants, and how many of them, under valid or invalid titles. To ascertain this the lands named by plaintiff, those in the possession of the defendants, as well as those in the occupancy of the third parties (the objectors,) should, in my opinion, have been in the first instance measured; besides this, there would seem to be a vast quantity of land held as lakhiraj in mouzah Balliah, not only by the defendants, but also by other parties, much of it held in coparceny, and all or nearly all, as far as I can judge,

descended from one common ancestor ; but there is evidently a feud among the several sharers, and it is alleged that the three brothers, defendants, have endeavoured to support their claim to their own lands by filing *copies* of various documents, the *originals* being in the possession of others, who have of their own accord produced them, and which have no connection with the real land in dispute. It is not for me to say that it is not so, and the thing is possible ; but until *all* the lands are measured and clearly marked off, it is out of the question to decide whether the land is *mal* land, open to assessment, and appertaining to plaintiff's talook, or whether it is lakhiraj, belonging to the defendants. Taking this view of the case, I remand it to the deputy collector, in order that he may restore it to his file, and, having deputed an ameen to ascertain the particulars above pointed out, he can, on receipt of the ameen's measurement papers, and, after carefully examining and comparing the documents produced by all parties, decide it afresh.

Value of stamp paper to be refunded in the usual way, and the appeal is decreed.

THE 13TH FEBRUARY 1850.

Case No. 6 of 1848.

Appeal from the decision of Baboo Chunder Seekur Chowdry, Principal Sudder Ameen of West Burdwan, dated the 10th March 1848.

Kumaram, talookdar of the putnee lot Sahibgunge, Plaintiff,

versus

Ram Mohun Bannerjea, putneedar of the Seenaputtee mehal, &c.,
(Defendant,) Respondent.

Musst. Mungla Daby, private purchaser of the lot in question,
Appellant.

SUIT to obtain the reversal of a sale held in execution of a decree, No. 6, and to continue his right in certain lands, after disposing of all lakhiraj disputes, &c., laid at rupees 145-8.

Plaintiff states that, in the aforementioned lot, division Maun Khamar, there was a mouzah by name Gopeenathpore recorded in the name of Gobind Bagdee, at a jumma of rupees 48-5-3. Gobind having fallen into arrear, plaintiff brought a summary suit against him under Regulation VII. of 1799, for the year 1249 B. S., and obtained a decree, took out execution, No. 845, and received permission to re-settle the lands; whereupon he, plaintiff, retained them for himself, and at the commencement of 1250 B. S., one Bhowanee Bagdee took them at a jumma of rupees 51, giving him (plaintiff) rupees 31 consideration money, an interchange of pottahs and kubooleuts was effected, and Bhowanee is and was put in possession. Plaintiff has

discovered that Bhurrut Bhoose, one of the defendants, has taken out execution of a decree, No. 6, against Gobind Bagdee, and, having connived with Gobind and the talookdar of the Seenaputtee mehal, has attached seven distinct parcels of land as belonging to his zemindary,

B. C.		
I	17 15	Gobind Bagdee's jummeehuk in the Seenaputtee mehal.
II	10 0	Ghatwally lands belonging to various Bagdees.
III	14 0	Mal claimed as ghatwally jummae land.
IV	8 10	Lands of mehal Lodnah.
V	2 10	Budun Ghosal's lakhiraj.
VI	4 0	Hurro Mohun Chatterjea's do.
VII	3 15	Dak service land.

and, having bought over Bhowanee, has fraudulently caused a "kubool" reply to be filed in the decree case, and has had the rights of Gobind sold off. Bhurrut Bhoose was the purchaser at rupees 72 of the disputed land, and Prawn Bhoose too bought 4 beegahs at 2 rupees. Plaintiff

says that defendants have in consequence of the above acts interfered with his revenue, and, with the exception of the 10 beegahs ghatwally, no person in any way holds any lands; that on a former occasion, when a decreedar carried out execution of a decree and attached them, Bhowanee laid claim and they were released, and it is nothing but fraud and trickery now to attach and sell the same property in liquidation of a debt due by Gobind. Plaintiff therefore sues to be retained in possession in beegahs 50-10 of his jummae rights, and that the lakhiraj titles set up by Nos. 5 and 6, may be finally settled, &c.

Parbutty Churn Paulit, defendant, objects to the land No. 4 being claimed by plaintiff: he urges that it belongs to his lot Lodnah; that it was the jummae land of Gobind Bagdee, at a jumma of rupees 6-14, who paid him his revenue regularly up to 1250 B. S. After which it was sold as stated, and he receives his rent now from Bhurrut; plaintiff has connived with the two ryots, Gobind and Bhowanee, and wishes to make out that the lands belong to Gopeenathpore, and he replies that plaintiff cannot sue so many distinct parties in one and the same plaint, &c.

Bhurrut Bhoose and Prawn Bhoose reply separately, but to the same purport, the former being the purchaser of certain jummae rights which were sold, and the latter the party with whom the lands were subsequently settled; they both object to mal and lakhiraj lands being doubled up, and a suit being brought in this way, &c.

Budun Ghosal and Hur Chunder Chatterjea, defendants, reply in support of their respective lakhiraj titles Nos. 5 and 6.

The two ryots, Gobind and Bhowanee, have not appeared.

The revenue authorities were called upon to report upon the lakhiraj tenures, and, on the 26th of May 1847, the deputy collector of Bancoorah replied to the effect, that no proofs had been adduced, and the lakhiraj titles were in consequence invalid. After this Hur Chunder, lakhirajdar, having petitioned to be permitted to file his proofs, the principal sudder ameen allowed him to do so on the 18th of June 1847, and the case proceeded.

The principal sudder ameen⁶ observes that the case had been pending a long time in the deputy collector's office, and both parties, after great delay, filed their proofs with the evidence of their witnesses, and Hur Chunder produced a copy of a taidad No. 64,019; but as there appeared to be great confusion in regard to the boundaries of the land in dispute, plaintiff was called upon, on the 4th February 1848, to deposit the necessary fees for the deputation of an ameen: he declined, urged that his case could be proved by his documents and the evidence of his witnesses, and begged that it might be tried accordingly. In the opinion of the lower court, formed from the record, plaintiff has in no way proved his right to the land in dispute; he has only filed the jumma-wassil-bakee accounts and kubooleut of Bhowanee, and tendered the evidence of six witnesses, but he cannot believe the latter as they are so very contradictory, and it does not appear from their testimony whether the area is 50 or 100 beegahs, whether it is all lakhiraj or what, or what are the boundaries. The jumma is said to be rupees 51, but plaintiff has produced no proof in support of the land being his *mal*, and the principal sudder ameen is of opinion that his case is altogether without foundation, besides which plaintiff has demurred to the deputation of an ameen. He considers that the defendants have proved by witnesses; that the disputed lands belong to them respectively as claimed; that he had no authority to sue them jointly, as he has done; that as he admits Bhowanee Bagdee is the sole ryot of Gopeenathpore, he never would have been silent had he been dispossessed, nor would he, as alleged, pay up his revenue regularly to plaintiff without having some land from whence to raise it. The principal sudder ameen considers it a difficult matter to decide *mal* and lakhiraj claims of this nature in this way, and as plaintiff has not proved his case, for the above and other reasons he dismissed it, with costs, &c.

Musst Munpla, styling herself the proprietor of lot Sahibgunge by private purchase, appeals, and states that, as defendants do not deny that the lands belong to Gopeenathpore, no further proof was required of her. She urges, secondly, that the lower court had no right to pronounce upon the lakhiraj, and that, although the case was pending for a long time before the revenue authorities, the lakhirajdars filed no proofs or documents; she says that the copy of the taidad produced by Hur Chunder must have been prepared for the occasion, or it would have been previously tendered. Thirdly, she urges that the Seenaputtee is a "chakraun" mehal, and every parcel of service land is known and specified therein, but the malik of the Seenaputtee mehal has not shewn to which his land belongs; and as plaintiff had acknowledged that, with the exception of 10 beegahs ghatwally, none other belonged to any person, the principal sudder ameen should not have admitted defendant's title without proofs. Fourthly, she denies that there is any dak service land, and no proofs from the

magistrate's court have been adduced in support of it. She repeats what plaintiff stated regarding the collusion between Gobind and the decree purchaser of his (Gobind's) jummae rights, and adds that, as Bhowanee was Gobind's brother, they have both wilfully kept out of the way, &c. Fifthly, no local enquiry was necessary. Plaintiff, being the malik of Gopeenathpore, was at liberty to sue as he did, and that the Lodna malik's plea is inadmissible, as, in the first instance, the land at issue was attached as the land of Lodna appertaining to Gopeenathpore, and afterwards as being near to Gopeenathpore, on which Bhowanee laid claim, and it was admitted, and after this Bhowanee connived with Bhurrit and caused the land to be sold by giving in a "kubool-jowab." Sixthly, and finally, she stands up for her own witnesses, and urges that defendant's witnesses are their dependants, and can say and do as they please.

The appeal was admitted by my predecessor on the 2nd February 1849, but his reasons for admitting it are not recorded.

JUDGMENT.

However weak the defence set up by the maliks of the Seena-putte mehal and of lot Lodna, as also of the lakhirajdars may be, it can avail nothing, in my opinion, in plaintiff's favor. Plaintiff wishes his rights to be retained in an entire village, calling it Gopeenathpore, the said village being said to comprise beegahs 51-10, agreeably to his statement, but his witnesses cannot say whether the area is 50 or 100 beegahs, or whether any and what portion of it is lakhiraj, and they are so extremely conflicting in their evidence that it is not only difficult, as remarked by the lower court, but I maintain it is quite impossible to say for what land plaintiff is suing,—no correct area and no boundaries being in any way forthcoming, while the lands at issue are proved to be in the possession of no less than seven distinct parties, all of whom are able (and have proved to the satisfaction of the lower court) to establish that they so hold it according to their respective titles, and the plaintiff is in no way interested or concerned in them. The only way (granting that the plaintiff could legally sue as he has done, which I do not consider he could) whereby a clear understanding of plaintiff's case might have been come to, has been opposed by him, and as he wished it to be decided on the proofs and evidence he had produced, and objected to the deputation of an ameen, and has altogether failed to establish his right to the lands in dispute, I have no hesitation whatever in confirming the decision of the lower court, dismissing plaintiff's case, and I hereby confirm it, and dismiss the appeal, with costs.

THE 13TH FEBRUARY 1850.

Case No. 115 of 1848.

Appeal from the decision of Moulvee Noorul Hussein, Moonsiff of Bishenpoor, dated the 24th February 1848.

Kennaram Mettya and others, (Plaintiffs,)

versus

Ramchand Ghuttuk and others, (Defendants.)

SUIT to recover the value of rice, &c., illegally attached under the summary suit laws on account of 13 beegahs service land, laid at rupees 121-5-4.

Plaintiffs say that there are 13 beegahs of "autpuhuree," or service land in mouzah Ghautsahur, appertaining to lot Rooheesur, the person who does the work obtains the produce. Plaintiffs call themselves the servants and the area is $9\frac{1}{2}$ beegahs in one "bund," but by measurement it has proved 13 beegahs. They gave it, they say, to cultivate to Ram Mundle and three others, and another parcel of $3\frac{1}{2}$ beegahs was given to Muddoo Mehta, the revenue to be paid according to the "bhag" custom, half and half on the produce. When the rice crop was ripe, plaintiffs issued notice No. 66, under Regulation V. of 1812, against Ram Mundul and others, ryots of the $9\frac{1}{2}$ beegahs, whereupon defendants also sued No. 113, against Kennaram Mettya and Kishtoo Bhat, plaintiffs making Ramjadub Biswas the nominal plaintiff, and under that plea defendants took away the rice, and notwithstanding they, plaintiffs, petitioned the magistrate, nothing was done. Again, defendants, in the month of Aughun 1253, plundered the balance of the crop on the 13 beegahs or $9\frac{1}{2}$ beegahs; they, plaintiffs, therefore sue for the value of the rice, straw, &c.

Ramchand Ghuttuk, defendant, replies that there is a flaw in the plaint, and it cannot be accepted; that plaintiffs and the defendants in the distraint case have sued ijmalee; that the land in dispute belongs to mouzah Bycuntpoor, appertaining to lot Shamdoospore, Ramjadub is the sole ryot of Bycuntpoor, and cultivates by his under-ryots, and until the talookdar of Roorheesur sues about his boundaries; the case cannot proceed, that Ramjadub distrained (No. 113) his own "koorfa" ryots' crops in Bycuntpoor, plaintiffs colluded and presented a petition in the Gurbettah joint magistrate's court, but it was rejected; and if a local enquiry is held and the byenamah examined, the falsity of plaintiffs' case will appear.

Several other of the defendants reply in support of Ramchand Ghuttuk's reply, deny ever having plundered plaintiffs' crops, and urge that plaintiffs have not given any boundaries of their lands, &c.

The moonsiff relies on a fysalah, No. 269, of the principal sudder ameen's court, dated the 7th of July 1847, and considers that the land in dispute belongs to talook Rooheesur agreeably thereto, and

as it is proved thereby to be "service" land, no further enquiry is necessary. He observes that Ramchund Ghuttuk, defendant, was called upon on the 14th of February 1848, to appear and cause the attendance of his absent witnesses, but he did not so, and though his vakeel stated, on the day on which the case was decided, that one of them was present, it did not appear that he was, on the contrary it was only a plea for further procrastination. He admits that both parties instituted suits under Regulation V. of 1812, for the crops, and that defendants removed them under cover of his suit No. 113, and yet he decrees against the defendants for plundering, &c., gives costs, but no damages.

In appeal Ramchunder Ghuttuk, defendant, (and Hulodhur Bural) talookdar of lot Shamdossore, urge that plaintiffs have colluded with the malik of Roorheesur, to obtain possession of this land, that fysicalah No. 269, has no reference to the case in point, and they were no parties to that suit, and as their witnesses were present their evidence should have been taken, &c.

The moonsiff's proceedings are altogether irregular. There is a decree in Persian, and a clean copy of it, as the original was a good deal scratched; but unfortunately the Bengalee translation does not tally with either. Again, as regards the witnesses of defendants, there is no proof that they were not present as stated, hence these flaws would be enough to vitiate the decree, but the moonsiff has stated that fysicalah No. 269 settles the point as to whom the land belongs, but it does not do any thing of the kind, and this case has evidently been brought about fraudulently and collusively by plaintiff and the talookdar of Rooheesur, in the hope that the land in dispute may be decreed to belong to them. Plaintiffs and defendants both distrained the same crops, and as defendants removed them in virtue of their distraint case, it cannot be considered that they plundered them and thereby made themselves liable to damages. It was, I opine, plaintiffs' business to bring an action for the reversal of the punjum case No. 113, when it would have come to light whether the defendants, distrainers, were right or wrong. Further there is nothing to shew what right plaintiffs possess to the land, the produce of which is stated to have been plundered; for until this right is proved and the "kanoon punjum" suit 113 is reversed, plaintiffs can scarcely come into court for damages. I consider therefore that the decree is not only irregular but incomplete, and plaintiffs should first deposit fees for the deputation of an ameen, and before him they should point out their lands, defining the boundaries, &c., after this the case can proceed on its merits in the usual way. Ordered, therefore, that the appeal be decreed, and the case remanded for trial *de novo* to the lower court with reference to the foregoing observations.

Value of stamp paper to be refunded as usual.

THE 22ND FEBRUARY 1850.

Case No. 12 of 1848.

Appeal from the decision of Baboo Chunder Seekur Chowdry, Principal Sudder Ameen of West Burdwan, dated the 24th June 1818.

Seetaram Doss and others, (Plaintiffs,) Respondents,

versus

Mookoond Lal Singh Baboo and others, (Defendants,) Appellants.

SUIT for possession of certain lakhiraj lands with "tusurruffaut," consequent on an illegal distraint in 1252 B. S., and wassilaut from 1253 B. S., laid at rupees 1,444-5-10.

Plaintiffs state that Seetaram Doss, one of the plaintiffs, and Hurree Churn Doss and Muttro Mohun Doss, the fathers of the other plaintiffs, whilst their property was held ijmalee, and Juggernath Doss was a sharer, purchased from one Ram Kaunt Mookerjea, on the 25th of Srawun 1221 B. S., for rupees 301, 16 beegahs of land called Deegaree Sool, in part of "Puddoahnamo Bun." On the 27th Srawun 1223 B. S., they bought 8 beegahs in part of 16 beegahs called Deegaree Sool, in part of Puddoah Gopalpore in the name of Juggernath Doss, and the other 8 beegahs for rupees 150-8, on the same day, from Ram Kaunt and Kumla Kaunt in the joint names of Seetaram Doss and the two parents of the other plaintiffs, and they were in possession. Plaintiffs allege that, some time after, certain ryots of the land sued for their "pungee" rights No. 3,920, and obtained a decree in the sudder ameen's court, but on appeal No. 139, on the 20th August 1833, the judge reversed the decree, on which they (plaintiffs) took out execution No. 402. An ameen was deputed to give possession which he did to plaintiffs and the heirs of Juggernath Doss, according to their respective 8 annas' shares. The plaintiffs add that, independent of the above 16 in part of 32 beegahs, Seetaram Doss and their two ancestors purchased in Nuldangah Gopalpore beegahs 3-19-12, in Oopur Gopalpore beegahs 8-1-8, altogether beegahs 12-1-4, on the 32nd Assar 1228 B. S., also beegahs 7, in Oopur Gopalpore, hasil and jungle, on 19th Bhadoon 1230 B. S., by two kubalahs from Ram Kaunt, making in all beegahs 19-1-4 of lakhiraj land, and they were in possession. It is then stated that a dispute arose about a portion of the above land with one Beer Singh Baboo; an action was instituted, and the case is pending separately. After this, or at the close of 1250 B. S., the plaintiffs let out for two years, 1251 and 1252 B. S., at a yearly rate of 41 measures of rice and 2 kahuns and 12 puns of straw, to two ryots, Dhunye Manik and Hulodhur Dutt, their 16 beegahs *plus* beegahs 3-19-12, also one parcel of beegahs 2-0-4, and another of beegahs 1-10, called Bukooltollah in part of beegahs 8-1-8, altogether beegahs 23-19. The ryots gave a kubooleut, paid their revenue in

1251 B. S., and in 1252 B. S., after they had cultivated the land, there was a misunderstanding about the rent, and plaintiffs were on the point of distraining the crops, when the karpurdaz of Mookoond Lal Singh and other defendants connived with Dhunaye Manik, the ryot, and distrained No. 212, the whole of the crops of the 32 beegahs as well as those of the jote lands, belonging to their two ryots, calling them their ryots, and that their jumma was rupees 32 per annum. Plaintiffs say they heard of this and brought a counter-claim No. 218, and attached the rice, on which all the defendants, excepting Hulodhur Dutt and other parties, plundered the said attached crops, but eventually their suit was struck off the file. The plaintiffs urge, that they never obtained their rice and straw as per ryots' kuboolcut in 1252 B. S., and in 1253 B. S. they cultivated by themselves beegahs 23-19, and that defendants dispossessed them from beegahs 19-19-1 thereof; they consequently sue for possession of this latter quantity of land, for "tussurrufaut," on account of 1252 B. S.; and for wassilaut from 1253 B. S., with costs, &c.

Russik Nagur Singh Baboo, defendant, replies that the land belongs to Chodoramonee Maharanees, his mother, and to Rugonath Sing, his elder brother, who obtained it with other lands, altogether 1,500 beegahs from Rajah Chytn Singh, the former zemindar, for maintenance purposes. No portion of it belongs to Gopalpore and plaintiffs have exchanged the names of the ryots and the boundaries of the land. The alleged seller, Ram Kaunt, was only their meadee ryot, and not the malik of the land, and he had no power to sell it; and though he may have given a kubalah, still his (defendant's) rights in the aforesaid maintenance grant cannot be affected thereby; and if only proofs of the plaintiffs' lakhiraj titles are called for, their trickery will come to light. He adds that the said Ram Kaunt gave to his mother in 1213 B. S. a kuboolcut for the lands for 11 years, at a jumma of rupees 32 per annum, and received a pottah from her; that in 1224 B. S. he received another pottah for 11 years during which Ram Kaunt cultivated them "nij" and by under-ryots. He urges that his mother borrowed money from the said Ram Kaunt, and he (defendant) too had occasion to do the same for the "shraud" expenses of his mother; the amount so borrowed was rupees 544, and defendant made over the land for 17 years from 1235 to 1251 B. S., at a jumma of rupees 32 per annum, in consideration of the debt and with an agreement that Ram Kaunt should restore the land in 1252 B. S. He (defendant) re-obtained possession, and the land has now passed over to his two sons, Mookoond Lal Singh and Judoontundun, defendants, a suit No. 13 was brought in the resumption courts regarding this grant of 1,500 beegahs, and it was upheld, and they urge that though plaintiffs refer to a decree which they have obtained it cannot affect them, defendants, agreeably to Construction No. 744. In 1252 B. S., this defendant says, his two sons distrained the crops of Dhunye and Adhit Roy, their ryots, of the disputed

land and obtained their revenue, and during the year 1253, it was cultivated by Bhurrut Manik, and plaintiffs have no right or title thereto.

The two sons, Judoonundun and Mookoond Lal Singh, defendants, reply as their father Russik Nagur Singh Baboo.

Nuffer Chund Ghosal, defendant, replies that he has no concern whatever with plaintiffs' lands.

Hullodhur Dutt, defendant, supports plaintiff by saying that he cultivated the lands in 1251 B. S., paid his revenue, and that in 1252 B. S., the defendants plundered his rice crops.

Bungsee Dan and Adhit Dan, defendants, support Russik Nagur Sing Baboo, defendant.

The principal sudder ameen remarks that, as this suit and No. 62, which has been brought by the heirs of Juggernath Doss, against Russik Nagur and others, defendants, for their own 16 beegahs, are in every way similar, the two were heard together, and as it appeared that the parcel of land, beegahs 3-19-1, referred to in the plaint was a separate affair, it was not disposed of. He considers defendants' case to be without foundation, observes that defendant Russik Nagur has not been able to produce the pottah which is stated to have been given for 11 years in 1213 B. S., and although he has filed the two kubooleuts of 1224 and 1235 B. S., and supported them by witnesses, as well as by the writer of the kubooleut in 1235 B. S., he cannot believe them, because by looking at fysalah No. 3920, it appears that Roop Dutt Ryot mentioned in his plaint that Ram Kaunt Mookerjea had made over his *lakhiraj* by a pottah to Teekaram Dutt, and on the strength thereof the sudder ameen decided the case, upholding the "jote," but on appeal No. 139, this decree was reversed, Roop Dutt's occupancy upset, and the plaintiffs' (in this case) possession confirmed. If, therefore, defendants' plea regarding the grant of 1,500 beegahs was correct, they never would, the principal sudder ameen argues, have allowed the ameen who was deputed to give possession to plaintiffs; and, now that Ram Kaunt is dead, they, he thinks, wish to retain the land in dispute by fraud; he has no doubt of the kubooleuts having been fabricated: the deposition of Soobul Chund, one of the witnesses of defendants, is opposed to defendants' own plea, as the latter states that Ram Kaunt was all along in possession from 1213 B. S., by other witnesses of defendants it is evident that, when plaintiffs' ancestors obtained possession by the civil court, they erected a house on the land for their ryots; and witness, Roychurn Ghose, named by both parties in suit No. 62, states that the disputed land was Ram Kaunt's *lakhiraj*, and plaintiffs' ancestors having purchased it, obtained and were in possession. In the opinion of the principal sudder ameen the plaintiffs have proved the plundering and illegal distraint, and having established by their two bonds, both registered by the pergunnah kazeer, one dated in 1221 and the other in 1223 B. S., as well as by witnesses, that Seetaram Doss, one of the plaintiffs, and Muttro Mohun and Hureechurn, ancestors of

the other plaintiffs, did purchase the land in dispute and obtained possession; that defendants in collusion one with another did dispossess, illegally distrain, and carry off the crops, and as the court cannot place any confidence in the enquiries of the ameen who was deputed, he having clearly connived with defendants and submitted a rooeedad in their favor, and believing that the report which was forwarded by the ameen, seven days previously to his submitting his proceedings, in which he alluded to the plaintiffs having gone into court to petition against him, was prepared in collusion with defendants and forwarded peshbundy; and Russik Nagur, defendant, not having tendered any collectory or other proof of the validity of the alleged 1,500 beegahs maintenance grant, and not thinking the evidence of defendants' witnesses sufficient to counterbalance or vitiate the evidence tendered by plaintiffs, and the land in dispute being of old, the property of plaintiffs, and that it should not pass out of their hands by a distraint case, the principal sudder ameen decrees the amount claimed by plaintiff as tussuruffaut on account 1252 B. S., and wasilaut from 1253 B. S., to be adjusted and possession to be given against all the defendants, omitting those who have been excluded by plaintiffs with interest, costs, &c., the wasilaut, he adjudges, against Russik Nagur and his two sons from 1253 B. S. An appeal has been preferred by Russik Nagur Singh and his two sons, Mookoond Lal Singh Baboo and Judoonundun. They urge, 1st, that the court should in the first instance have disposed of their plea, which was to the effect that the seller of the land or his heirs should have been made parties to this suit.

Secondly.—That Ram Kaunt was only a temporary ryot, and held no proprietary or lakhiraj rights; that the disputed land was in a manner pledged on the death of Russik Nagur's mother to Ram Kaunt, but he had no power to sell it, and plaintiffs, being aware of this, purposely did not make the heirs defendants, and if they had held any collectory proof of their lakhiraj title, they surely would have produced it, hence their lakhiraj title has not been established; and although the principal sudder ameen enquired about this from plaintiffs' vakeel, they could not produce any proofs of their lakhiraj by purchase or otherwise.

Thirdly.—The kubooleut of 1213 B. S. was given in the time of Russik Nagur's mother, many years ago, and has been mislaid, but they, appellants, produced other proofs and witnesses, who did not contradict themselves and quite sufficient to prove their defence.

Fourthly.—By referring to fysicalah No. 3920, it will be seen that the pottah which was given by Ram Kaunt Mookerjeea to Teekaram, his "koorfa" ryot, relates to his jamaee land, and *not* as stated by the principal sudder ameen to lakhiraj land: further, from the same fysicalah, also from Teekaram's pottah and by copies of authenticated dakhilabs, which were given to Teekaram by Ram Kaunt, it will appear that Ram Kaunt only underlet his jamaee rights, and that he was their (appellants') ryot.

Fifthly.—They argue that they are in no way affected by the appeal decree No. 139, that the jumae pottah, which was given to Teekaram, was in no way cancelled, but it was not considered a mocurree one; again, they were never made parties in the suit, were never made acquainted with it, and no kubalah was filed or any enquiries instituted in their presence or with Ram Kaunt, the alleged seller; hence, by Construction No. 744, that decree cannot be brought forward against them.

Sixthly.—They urge that they filed a copy of the decree which was passed under Regulation II. of 1819, No. 13, releasing the 1,500 beegahs, also a mouzahwaree list, from which it is clear that the land in dispute is a part and parcel of that grant.

Seventhly.—They urge that Soobul Doss, their witness, has not contradicted himself; that their mother's possession and theirs is one and the same, and as Ram Kaunt was only their ryot, his being in possession, is equivalent to their being so.

The appeal was admitted by my predecessor on the 23rd of May 1849, and a reply has been filed with the following documents by respondents:

I. A copy of special commissioner's roobakaree, dated 25th July 1849, shewing that an appeal has been preferred against the deputy collector's decision, No. 13, releasing the 1,500 beegahs grant.

II. A kubalah, dated 15th Chyete 1218 B. S., given by Rajah Jey Singh, in favor of Ram Kaunt Mookerjea, selling him for rupees 69, beegahs 825, altogether beegahs 13 of *lakhiraj* land in Pudooh, registered by the kazeer of the pergunnah.

III. A kubalah, dated 15th Chyete 1218 B. S., from the same to the same for beegahs 19 of *lakhiraj* in Pudooh, for rupees 255, and registered by the pergunnah kazeer.

This case was heard and argued on the 19th instant, in the presence of the parties interested, and I proceed to pass judgment thereupon.

The decision of the principal sudder ameen is incomplete, and his arguments are not supported by the record. The defendants' plea that the seller of the land in dispute, Ram Kaunt Mookerjea, or his heirs, should have been made parties to the suit has not been disposed of or even referred to, and in the plaint connected with the *fysalah* of the sudder ameen No. 3920, dated the 13th of February 1827, no mention whatever is made of Ram Kaunt's *lakhiraj* but only of his jumae rights. Again, by examining this *fysalah* and the pottah, dated the 28th of Pous 1213 B. S., given by Ram Kaunt Mookerjea to Teekaram, as also the authenticated copies of the *dakhilans* of 1217 B. S., there is no allusion to the land being *lakhiraj*, on the contrary there is every reason to suppose that the land in dispute was included within the 1,500 beegahs grant; further, by referring to the appeal No. 139, it will be seen that the case which was then at issue related to jote and mal lands, and to the rights of

certain ryots, and that the defendants, appellants in this suit, were in no way parties to either the original suit No. 3920, or its appeal No. 139, hence their proprietary rights cannot, in my opinion, be in the least affected or interfered with by any thing which is alleged to have been done in carrying out execution of the appeal decree No. 139. Plaintiffs state that they purchased the land in dispute as lakhiraj, but before the lower court not a tittle of proof has been produced to shew to what tenure the land was attached or in what way it was lakhiraj, or that the alleged seller, Ram Kaunt Mookerjee, was the *bonâ fide* lakhirajdar in possession and at liberty to sell, nor have the alleged sales been ever registered in the revenue offices. No one ever purchases lakhiraj property without enquiring into its validity and seeing that it is properly protected by a sunnud or char, and that it is duly registered in the collector's office. In this instance there was no proof before the lower court of the lakhiraj title, nor were the heirs of the alleged seller, as they most assuredly ought to have been, made parties to the suit, and though plaintiffs (respondents) have now filed two kubalahs of 1218 B. S., and copy of a proceeding of the special commissioner's court, the former to establish their title and the latter to shew that though the deputy collector of Bancoorah did release the 1,500 beegahs referred to, that an appeal is pending against that decision, still this suit can in no way be affected by any thing which may be done in appeal, as the land in dispute is, in my opinion, included in and is a part and parcel of that grant, the right of the defendants (appellants,) and the two kubalahs are not trustworthy documents, never having been presented previously in any point, and if they had been genuine it is not likely that respondents would have kept them out of the way, as they might have been of service to them, owing to some particulars of their alleged lakhiraj property being given in them. I consider then that plaintiffs have altogether failed to establish their case, and as the fact of dispossession is not established, and plaintiffs' (respondents') rights and interests in the land in dispute are in no way apparent, I cannot uphold the decision of the lower court, but hereby reverse it, by decreeing the appeal and dismissing plaintiffs' suit. Costs throughout the courts to fall upon plaintiffs (respondents.)

THE 22ND FEBRUARY 1850.

Case No. 13 of 1848.

Appeal from the decision of Baboo Chunder Seekur Chowdree, Principal Sudder Ameen of West Burdwan, dated the 24th June 1848.

Soobul Chunder Doss and others, heirs of Juggernath Doss,
(Plaintiffs,) Respondents,

versus

Mookoond Lal Singh Baboo and others, Defendants.

Russik Nagur Singh and his two sons, Appellants.

SUIT for possession of 16 beegahs, &c., laid at rupees 1,409.

This case is in every way similar to the foregoing, or No. 12, just now decided, the parties suing are the heirs of Juggernath Doss, the alleged purchaser of a certain quantity of land with the plaintiffs in suit No. 12, only they have brought their action separately against the defendants, and it is unnecessary to go over the same arguments as I have given them at length in the foregoing case. I have only to say that I cannot agree with the lower court in decreeing it in plaintiffs' favor, and the appeal having been duly admitted by my predecessor on the 23rd May 1849, I now, for reasons assigned in appeal No. 12, reverse it by decreeing the appeal, and dismissing plaintiffs' case. Costs throughout the courts to be made good by plaintiffs (respondents.)

THE 25TH FEBRUARY 1850.

Case No. 133 of 1848.

Appeal from the decision of Moulvee Noorul Hussein, Moonsiff of Bishenpoor, dated the 13th March 1848.

Nundram Paul, Plaintiff,

versus

Musst. Rebutty, widow of Ram Paul, and Checdam Paul, his brother,
Defendants.

SUIT to recover the balance of a "*khatah bhye*," rupees 116-7-5.

Plaintiff states that Ram Paul on various occasions borrowed money from him, and on squaring his accounts on the 25th Kartick 1251 B. S. there was a balance of rupees 66-7-5, and on the same day he borrowed 50 rupees in addition and signed the "*khatah bhye*" for rupees 116-7-5, Ram Paul promised to pay quickly; but not doing so, plaintiff sues him.

The widow defendant Rebutty denies that her husband ever squared the account as alleged or borrowed the cash; urges that this suit has been brought against her through enmity; that there was a "*karbar*" between plaintiff and her husband by which a balance of rupees 66-7-5 was wrongfully calculated to be due from

him; that he sold some cloth to one Muddoo Dalal, by which plaintiff received rupees 33 on one occasion, and rupees 28-2 on another, as she can prove, &c.

Cheedam Paul, defendant, replies that he is not the heir of Ram Paul, and is in no way concerned.

Although defendant to a certain extent, says the moonsiff admits the khatah account and states that it was paid up, still he does not believe the alleged payments. Plaintiff has produced his "khatahs" and proved them, and defendant has only tendered the evidence of two witnesses in support of the alleged payments, but they are of low caste and live elsewhere; besides Muddoo Dalal was called upon to explain the matter, and the "khatahs" of several of the Bishen-poor merchants were examined to ascertain whether cash transactions were usually entered in them, as the moonsiff was doubtful on the point. If defendant's plea of payment had been true some receipt would have been given for the payments and filed; and Muddoo Dalal would also have proved defendant's statement which he does not do, the moonsiff consequently decrees the amount against the property of the defendant's late husband, and although he considers that the other party is in no way answerable in this suit, he nevertheless argues that he cannot release him from responsibility owing to the decision of the Sudder Dewanny Adawlut, dated the 11th of August 1847.

Cheedam Paul, defendant, appeals against that portion of the decree which refers to him, and makes him responsible, although he is not included in the *bonâ fide* decree, and is deemed to be free by the lower court.

JUDGMENT.

I do not understand this decision, and it would be extremely difficult to carry out execution of the decree. It is given against the *property* of the defendant's late husband solely, and yet Cheedam, though not included in the decree, cannot, it is stated, be excluded from responsibility. If he is responsible he should be included and cast in the decree, otherwise his name should be expunged therefrom. The precedent quoted has nothing whatever to say to the case in point, and I cannot perceive why the moonsiff has referred to it. The case alluded to is given at page 422 of the Decisions in appeal of the Sudder Dewany Adawlut for 1847, and it is connected with quite another matter. (Ramlochun Ghose *versus* Gooroopershaud Ghose, No. 170 of 1845.) Again, the lower court was all wrong in calling for a "kyfeeut" from the "Dalal," or from any one, the more especially as the said "Dalal" Muddoo was one of the defendant's witnesses and summoned by a subpoena issued by the court; further, the "khatah bhyes" produced in court do not appear to have been stamped or the parties to have been fined for the omission as the amount is given and signed, and this is irregular; and lastly, it was most objectionable (and the course adopted open

to serious abuse) for the moonsiff to send for the "khatah" accounts of several of the Bishenpoor mahajuns, to satisfy himself on a point which he ought to have been well acquainted with, and one which is quite common and of daily occurrence. Under the foregoing circumstances, and with reference to Construction No. 997, I hereby decree the appeal, and remand the case for trial *de novo* to the moonsiff.

Value of stamp paper to be refunded in the usual way, and costs to be adjusted hereafter.

THE 25TH FEBRUARY 1850.

Case No. 29 of 1850.

Appeal from the decision of Baboo Bissessur Chuckerbutty, Town Moonsiff of West Burdwan, dated the 31st December 1849.

Moonshee Ameenuddeen Amed, (Plaintiff,) Respondent,

versus

Neerunjun Goshain and Muggun Chunder Hajrah, Defendants ;
Neerunjun, (Defendant,) Appellant.

SUIT to recover the amount balance of fees due to plaintiff as vakeel for defendant, the Goshain, laid at rupees 137-6.

Plaintiff states that he and Muggun Chunder Hajrah, defendant, were appointed by Neerunjun Goshain, his vakeel, in a heavy suit, which the Goshain instituted in the court of the principal sudder ameen of West Burdwan, the amount fees was rupees 675-8-15, and a compromise at one-half was effected, each vakeel to receive rupees 168-14. It is alleged that rupees 31-8 have been paid, and as the Goshain will not liquidate the difference, or rupees 137-6, plaintiff sues for it under Act I. of 1846.

Neerunjun, defendant, replies that no agreement was made as alleged; on the contrary it was settled that each of the vakeels was to receive rupees 75; that to this effect a rookah was sent by the plaintiff to him, and an understanding was come to in the presence of most respectable people. He has paid rupees 70 as per "rookahs," and only 5 rupees are due.

Muggun Chunder Hajrah does not appear.

In the jowab-ool-jowab, plaintiff repudiates the rookahs.

In the opinion of the moonsiff the defendant's case is bad. He was called upon twice to produce proofs of his agreement and his receipts, but he failed to do so, nor has he given the dates of the alleged payments or their several amounts. By examining the copy of the vakalutnamah, which was filed by plaintiff in defendant's case, it is dated the 24th of July 1847, whereas the alleged date of agreement is the 25th idem, hence as vakalutnamahs are not usually presented until some arrangement is entered into, defendant's case is not supported by his defence; further, as defendant has not been able to

produce his proofs and the suit was a heavy one, for no less a sum than rupees 32,555, and plaintiff has let off defendant one-half, the lower court decreed the amount claimed as just, with costs, &c.

In appeal, it is urged by defendant that plaintiff has not proved the fact of any agreement whatever having been made, and when plaintiff arranged to be his vakeel he never thought of his fees, and he never would have retained him as he could have obtained one on much easier terms. The other defendant, who is a vakeel of the court, should have been sent for and examined, that vakeels usually on being retained agree to any thing, and though he, appellant, was disposed to give plaintiff a present after he had succeeded in carrying his case for him through the courts, and rupees 30 had been deposited by him for the purpose with a respectable person and the vakeel, plaintiff promised to give in a "dustburdaree," yet he, the plaintiff, played false and never did so; he, appellant, begs he may be asked whether such is the case, and if he denies it he can prove it by respectable vakeels and mooktears. He adds, he is a poor Brahmin; he was willing to give more than enough, and it will be difficult now to select a vakeel: he was from home and unable to file his proofs and documents, but can now do so; and if Muggun Chunder vakeel's (defendant's) deposition be taken, plaintiff's case will be proved to be good for nothing.

Plaintiff (respondent) replies that defendant had plenty of time to file his proofs, and he may now have prepared false ones; that defendant wished to compromise for rupees 60, but he, respondent, declined, and he could, if necessary, prove it, and he prayed that, as the case was one of fees for services rendered on which he existed, it might be taken out of its turn and heard.

I confess I think the plaintiff has most satisfactorily established his case, and if he had been dishonestly disposed he might have caused the defendant to be mulcted in the full amount to which he was entitled under Act I. of 1846. He has let him off one-half, and given him credit for what he has paid, while defendant (appellant) has altogether failed in the lower court to prove that any agreement was ever made for rupees 75, or that he paid him rupees 70 in part of it. To be allowed to do so now is quite out of the question, and considering that plaintiff's services were of some consequence, and that plaintiff in a very heavy and important suit obtained a decree for his client, defendant, I am of opinion that his demand is just, and that he is fully entitled to it. I consequently confirm the decree of the lower court, and reject the appeal. Costs payable by appellant.

ZILLAH CHITTAGONG.

PRESENT : A. SCONCE, Esq., JUDGE.

THE 16TH FEBRUARY 1850.

No. 15 of 1847.

Appeal against the decree of Moulvee Ashruff Alee, Principal Sudder Ameen, dated 18th August 1847.

Baker Alee, Munsoor Alee, and others, (Defendants,) Appellants,

versus

Afazooden, deceased, represented by Kiamooden and others,
(Plaintiffs,) Respondents.

THIS is a case of long standing; and I have had much difficulty and doubt in arriving at a satisfactory judgment upon the matter at issue, not only from the circumstance that twice has the suit come before the judge on appeal, but because, in the proceedings hitherto held, the grounds, and hence the object of the suit had not been clearly discriminated. The claim stated by the plaintiff was simply this: he sought to recover certain land which, by a summary decree issued under the provisions of Regulation XLIX. of 1793, on the 7th February 1834, was declared to be possessed by him, and of which an ameen (Ramsurrin,) in conformity with that decree, put him ostensibly in possession, but which nevertheless has continued ever since in the occupancy of the opposing parties. The summary proceedings being held in February 1834, corresponding with 1195 M. S., the plaintiff claimed wasilat from that year down to the period at which his suit was instituted, 29th March 1844.

But in stating the amount and position of the land claimed, plaintiff departed from the condition of his old suit. In that suit he claimed 6 kanees, 5 gundahs, and that land was shewn by the proceedings of the ameen to be situated in three, not adjoining, but distinct "bunds," or patches of land. Now, however, plaintiff claimed 8 kanees, 5 gundahs, situated in two "bunds." And to justify this departure from the terms of the summary suit, plaintiff relied apparently upon a regular suit, which was instituted (by Azmutoolah Moonshee) for the purpose of destroying the effect of the summary decree in so far as he assumed that the chittahs of the ameen, Ramsurrin, fell upon 8 kanees, 5 gundahs, of which the property belonged to himself.

Now I do not profess to understand the connexion between this suit of Azmutoolah and the original summary decree. Azmutoolah's suit was dismissed: but in the proceedings I find no attempt to reconcile the claim of the plaintiff with the land measured by the ameen: and so far, whether the 8 kanees, 5 gundahs brought into Azmutoolah's suit corresponded with the 6 kanees, 5 gundahs of the ameen, Ramsurrun, and of the summary decree of 7th February 1834, or totally or partially differed therefrom, the determination of Azmutoolah's suit does not shew.

But be that as it may, both from the grounds of the claim as exhibited by the plaintiff to the present action, and from the answer of Baker Alee and others, defendants, who expressly declared that the plaintiff still enjoyed possession of the 6 kanees, 5 gundahs, which were delivered to him by the summary decree, it became, in my opinion, indispensably necessary to ascertain, and to be guided by the position and occupancy of the land which formed the subject matter of the decree passed on the 7th February 1834. As the proceedings came before me, however, no attempt had been made to distinguish the land affirmed to be plaintiff's land, by the summary decree: or to ascertain whether the land sued for in this occasion by Afazodeen corresponded in whole or in part with that land; and I considered it necessary to depute an ameen with clear instructions to enquire into this matter.

The ameen's proceedings came before me, in the presence of the parties, on the 10th December last, and on that occasion I drew up a roobakaree, embodying the facts exhibited by, or deducible from, the ameen's investigation, and I required both sides to be prepared to state any objections they had to the conclusions therein expressed. They state no objections; and it appears to me that my decree must pass in conformity with the tenor of that roobakaree.

The ameen by my instructions traced the land defined by the summary proceedings of 1834; the land as described in the plaint of the present action; and the daghs, or numerical parcels, which the land contested was marked by, in the measurement made a few years since by the revenue authorities: and it appears that the plaintiff has sued for some land which was not guaranteed to him by the summary proceedings of February 1834, and that he has excluded from his plaint some land the possession of which was so awarded to him. And not only so; it appears from the ameen's report that some land awarded to plaintiff in 1834, and which he has *not* included within the specific land of the plaint, is actually in his possession.

Upon the whole then, I find as follows: that k. 1-4-0-1, situated within the first bund of the plaint, corresponds with the first dagh of the measurement of 1834, and being in possession of the appellant, Baker Alee, should be delivered over to the respondents; also of the second bund of the plaint k. 1-3-2, hitherto possessed by Baker Alee, and 14 gs., 2 cs., possessed by Kaminee Begum, (both

of which portions of land correspond in part with the daghs 5 and 4 of the measurement of 1834) should be awarded to the respondents or all in all k. 3-2-0-2.

The principal sudder ameen decreed in all to the plaintiff k. 6-11-2, and the decree which I pronounce differs from the principal sudder ameen's not only as to the amount of the land which plaintiff is found entitled to have claimed; but also as to its identity. The principal sudder ameen, guided it is not clear by what information, assumed the k. 6-11-2, which he decreed, to be represented by seven daghs or parcels of the revenue measurement; viz., Nos. 5676, 6034, 6044, 6079, 6041, 6042, and 6052. Now there is no reason to believe that, excepting the dagh 6042, any of the other daghs fell within the chittahs of the ameen employed in 1834, Ramsurrun. Possibly from imperfect information, the ameen employed in this present occasion may have erred in assigning the numbers of the daghs to the patches of land which formed the old measurement of Ramsurrun ameen; he shows that the first item held by Baker Alee, viz., 1-4-0-3, is represented by dagh 6106; the third item of 1-3-2, by dagh 6033; and the g. 14-2, held by Kaminee Begum to be represented by daghs 6042 (in part) and 6054; this identity of the old land with the recent measurement may or may not be exact, and it is more to the purpose of this decree to declare that the respondents are entitled to hold this k. 3-2-2 in virtue of their right of possession, as usurped by the appellants.

Wasilat at rupees 2-4 will be paid by Baker, upon the whole land down to 1204, and by Baker Alee and Kaminee Begum respectively, from 1205, in which year the land in his possession was transferred to her. The costs will be charged in proportion to the amount decreed.

THE 16TH FEBRUARY 1850.

No. 662 of 1849.

Appeal from the decree of the Moonsiff of Putteeah, dated 31st October 1849.

Kalee Churn, (Defendant,) Appellant,

Ramjoy, (Plaintiff,) Respondent.

ON the 30th January last I remanded, upon summary appeal, a suit instituted by this appellant, which the moonsiff had struck off for neglect. Now it happens that that suit, instituted by this appellant, was prior in date to the present action and concerned the same land which this plaintiff, Ramjoy, sought to establish his possession of: but after dismissing Kalee Churn's case for neglect, the moonsiff,

in disposing of this suit, overlooked the evidence which, in support of his own view of his rights, Kalee Churn had in his own suit adduced. Both suits should be taken up together. And accordingly I remand this case also.

THE 16TH FEBRUARY 1850.

No. 663 of 1849.

Appeal from the decree of the Moonsiff of Putteeah, dated 31st October 1849.

Ramjoy, (Plaintiff,) Appellant,

versus

Kalee Churn, (Defendant,) Respondent.

ON the appeal of Kalee Churn, I have already this day ordered this suit to be remanded, and, necessarily, the case of the plaintiff (this appeal) will be re-considered. Should the moonsiff again decide in favor of Ramjoy, he will consider whether the amount of the land awarded to him differs from that claimed in no greater degree than one measurement differs from another, or whether there is any substantial reason for not allowing the whole land sued for.

ZILLAH CUTTACK.

PRESENT : M. S. GILMORE, Esq., JUDGE.

THE 14TH FEBRUARY 1850.

No. 1 of 1850.

Appeal from the decision of Mukomed Arshud, Moonsiff of Kendraparah, dated the 8th December 1849.

Rughoo Bhai, (Defendant,) Appellant,

versus

Punchoo Das, (Plaintiff,) Respondent.

CLAIM, rupees 9-2-5-10, principal and interest of a tumusook, dated 25th Bysack 1254 U., the conditions of which were, that the amount was to be repaid in two months, and that all payments made were to be recorded on the back of the bond.

Defendant denied the claim, but admitted that he borrowed the amount on the date stated, and asserted that he liquidated the same with interest on the 21st Cheit 1255, in the following manner, viz., he paid rupees 7-12-0 in cash, and withheld rupees 2-1-0, the price of cloth previously delivered to the plaintiff, and when he demanded the restoration of the *tumusook*, the plaintiff refused to give it up, until he received the sum of rupees 1-12, due from the defendant's surety; that he then through one Sham Das paid the sum of rupees 1-12, on the 26th Cheit, but the plaintiff put off from time to time the restoration of the bond.

Bhujnee Nath, surety, defendant in the original suit, did not enter appearance.

The moonsiff held that the plaintiff had failed to establish his claim, two of his witnesses having denied that they were present when he paid the money, and the other two being unable to state the date, month, or year when the money was paid; and as the conditions of the bond were that all payments were to be recorded on the bond, it was very improbable that the defendant would pay any money in opposition to those conditions; and he had not filed any petition in any court representing that the plaintiff withheld the bond; and he decreed the claim accordingly, with interest to the date of payment.

The defendant appealed, but without advancing any fresh plea.

JUDGMENT.

I agree with the moonsiff that the defendant has failed to establish his assertion regarding the payment of the debt, and as the conditions of the bond were, that all payments were to be recorded on the

back of the document, and fourteen months elapsed between the time when the defendant alleges he paid the amount of his debt and the institution of the suit, during which he failed to complain in any court regarding the detention of the *tumusook* by the respondent, I see no reason for disturbing the moonsiff's decision, and I hereby confirm the same, and dismiss the appeal without serving notice on the respondent.

THE 14TH FEBRUARY 1850.

No. 94 of 1849.

Appeal from the decision of Mahomed Arshud, Moonsiff of Kendraparah, dated the 6th November 1849.

Bahee Soonder Singh, (Plaintiff,) Appellant,

versus

Hurry Mahapatur and Bheeka Das, (Defendants,) Respondents.

CLAIM, rupees 89-10-9, principal and interest of a *tumusook*, dated 25th Bysack 1250 U., with interest to the date of payment.

The plaintiff stated that, on the above named date, the defendants borrowed from him the sum of rupées 50, and executed the bond, engaging to repay the loan in four months.

The defendants denied all knowledge of the bond, and stated that they were absent from home at Purajpore at the time it is alleged to have been written, and that on the same date they borrowed the sum of rupees 10 from Bhagun Hujarah, a mohajun at mouzah Kullerabank, and executed a bond in his favor, (which, if necessary, they would file,) and that they returned home the following day and paid rent to the dheedar of their village.

The plaintiff replied that, if the defendants had not borrowed the money, they would not have caused Kishen Nund to execute a "*dakhilah*," engaging to pay the principal on the 22nd Jeit 1256 U.

The moonsiff held that, notwithstanding the three witnesses to the *tumusook* had deposed to its due execution on the part of the defendants, no reliance could be placed on their evidence, as the plaintiff, in reply to the defendants' answer, had stated that Kishen Nund had, on the 22nd Bysack 1256, executed a *dakhilah*, engaging to pay the principal, and the said Kishen Nund had deposed, when cited by the plaintiff, that he knew nothing at all about the matter; and that if the plaintiff's statement regarding the execution of the *dakhilah* was correct, the *tumusook* had been cancelled, and if the *dakhilah* was not executed then the plaintiff's statement was false; and it was consequently to be inferred that the *tumusook* was a spurious document, and he dismissed the claim.

In appeal the plaintiff adduced no argument which substantiated his claim.

JUDGMENT.

In addition to the reasons assigned by the moonsiff for distrusting the genuineness of the bond, on inspecting that document, I find that the names of all the three witnesses have been written twice over, first in pale ink, and subsequently in dark ink, to correspond with the body of the document; and this naturally casts suspicion on the genuineness of the bond. It is therefore ordered, that the appeal be dismissed, and that the decision of the moonsiff be affirmed, without serving notice on the respondents.

THE 14TH FEBRUARY 1850.

No. 93 of 1849.

Appeal from the decision of Mahomed Arshud, Moonsiff of Kendraparah, dated the 7th November 1849.

Dhunye Parijah, Nimye Churn Chowdry and Rutna Cur Parijah,
(Defendants,) Appellants,

versus

Soodursun Chowdry, (Plaintiff,) Respondent.

CLAIM, rupees 32, the price of 640 bamboos, and interest thereon to the date of payment.

The plaintiff states that he executed a kubooleut on account of 4 beegahs, 17 goonths and 13 biswas of resumed land in mouzah Hajeepore, pergunnah Junker, on which there were 17 clumps of bamboos, 10 of which the defendants cut and carried off on the 25th Maugh 1255, and on his complaining to the magistrate he was directed to institute a suit under Act IV. of 1840; but as the land was already in his possession, he thought it preferable to sue in the civil court for the value of the bamboos.

Dhunye Parijah, defendant, denied cutting the plaintiff's bamboos, and stated that the land and bamboos belonged to Musst. Panoo Dey, the plaintiff's stepmother, who had sold him 60 bamboos for the sum of rupees 2, and other quantities to different other persons. He also objected that the plaintiff in a petition, presented by him to the collector, had represented the value of the bamboos to be rupees 17 only, and he had now raised it to rupees 32.

Nimye Churn Chowdry and Rutna Cur denied having been present when the bamboos were cut; and in other respects made the same answer as Dhunye Parijah.

The plaintiff replied that the reason of his valuing the bamboos at rupees 17, in his petition to the collector, was, that he was at Cuttack at the time they were cut, and that he named the said sum without ascertaining their real value. He also stated that the defendants, in their answer, filed in the collectorate, alleged that they had purchased 1 beegah, 10 goonths, 10 biswas, 2 kanees of the land

from the plaintiff's stepmother, whereas they now only say they purchased 60 bamboos.

The moonsiff held that the plaintiff's claim was fully established by the oral and documentary evidence adduced by him, and the contradictory statements made by the defendant Dhunye Parijah in the collectorate and before his court; and as Musst. Panoo Dey had preferred no claim to the land or bamboos, he decreed in his favor the sum of rupees 17 on account of 450 bamboos, the same being the number of bamboos and the value of them recorded in his petition to the collector.

JUDGMENT.

Since it is clear from the officiating deputy collector's roobakaree of the 24th April 1844, that the land was measured previous to settlement in the name of the plaintiff, and his witnesses have deposed to the fact of his possession, and Musst. Panoo Dey, his stepmother, from whom the defendants allege the bamboos were purchased, has filed no petition of objection, I see no reason to interfere with the moonsiff's decision, and therefore hereby confirm the same, and dismiss the appeal without serving notice on the respondent.

THE 14TH FEBRUARY 1850.

No. 95 of 1849.

Appeal from the decision of Sheeb Pershad Singh, Moonsiff of Cuttack, dated the 16th November 1849.

Sudasib Pershad Rai, (Defendant,) Appellant,

versus

Rajkisher Das, (Plaintiff,) Respondent.

CLAIM, rupees 130-1-4, principal and interest of a tumusook, dated the 11th Asin 1256 U., corresponding with the 24th September 1848, with interest to the date of payment.

The defendant denied borrowing the money, and stated that he was not acquainted with the plaintiff.

The moonsiff held that the execution of the bond by the defendant was fully proved by the evidence of the witnesses, and that there was no material difference between the signature on the bond, and the signature of defendant on the *vakulatnamah* and other documents filed by him also; that the statement of the defendant to the effect that he was unacquainted with the plaintiff was inadmissible, as he was himself a mohurir attached to the judge's office, and the defendant, the moonshee in the salt office, who had passed an examination in the judge's court for the office of moonsiff; and he decreed the claim.

JUDGMENT.

Besides impugning the character of the plaintiff and the witnesses to the bond, the appellant has assigned no reasons for appealing, and he filed no evidence of any kind before the moonsiff; and the signature to the bond corresponds exactly with the signature of the appellant, attached to several papers called for from the record office. It is therefore ordered, that the appeal be dismissed, and the decision of the moonsiff be affirmed, without serving notice on the respondent.

THE 16TH FEBRUARY 1850.

No. 18 of 1849.

Appeal from the decision of Tarakanth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated the 19th June 1849.

Jugbundoo Das, son of Kasseenath Das, deceased, (Defendant),
Appellant,
versus

Chowdry Mahadeb Das, (Plaintiff,) Respondent.

CLAIM, possession of khureedagee mouzah Agurh, &c. and mo-quddumee mouzah Salgaon, pergunnah Deogaon, and a 2 annas, 13 gs., 1 c., 1 kt. share of mouzah Orso, pergunnah Gundilo, and a 4 annas, 10 gundas share of mouzah Bankeehattee, with wasilat and interest on account of the last 8 puns of 1254, and the first 8 puns of 1255: suit laid at rupees 1,464-13-3.

The plaint sets forth that, on the 13th Jait 1247, Kasseenath Das, deceased, borrowed from the plaintiff the sum of rupees 407-4, payable in six months, and executed a *kutkubalah*, mortgaging the abovenamed properties, which was countersigned by his brother, Rugoonath Das, and having been unable to repay the loan with interest, he, on the 16th Asin 1250, after adjusting his accounts with the plaintiff, executed a fresh *kutkubalah* for the sum of rupees 500, which was also countersigned by Rugoonath Das; and that after the death of Kasseenath Das in Maugh 1253, the plaintiff petitioned the court under Section 8, Regulation XVII. of 1806, for the foreclosure of the mortgage, and caused notices to be served on Jugbundoo Das, for himself and his minor brothers, Beloo Das and Punchoo Das, the sons of the deceased, Kasseenath Das, but they failed to pay or deposit the money in court during the time allowed, and the plaintiff in consequence sued them and Musst. Sonah Dey, the guardian of Putty Das, the adopted son of Rugoonath Das, for the possession of the properties.

Jugbundoo Das denied that his father either borrowed the money or mortgaged the properties, and stated that he was not the guardian of his brothers, and that notice of foreclosure had not been served on him; he further stated that his father had no brother of the name of Jugurnath Das, (erroneously written for Rugoonath Das in the

kazee's certificate on the *kutkubalah*,) and that no one of the name of Rugoonath appeared before the kazee when he certified the kubalah; and that until the plaintiff had published a notice in the real name of Rugoonath Dass' widow, his claim could not be entertained, &c.

The widow of Rugoonath Das stated that her name was Narring Dey, and as the plaintiff had sued her as Sonah Dey, his suit should be dismissed; she also stated that if her husband, Rugoonath Das, had attested the *kutkubalah* in approval of its conditions, he would have attended before the kazee, at the time of its registry, and the kazee would not, as asserted by the plaintiff, have by mistake recorded the name of Jugurnath, in place of Rugoonath Das; and she further alleged that the names of the three sons of Kasseenath Das were, Jugurnath Das *alias* Jugbundoo Das, Beloo Das *alias* Punchoo Das, and Bulram Das, and that as the plaintiff had stated his third son's name to be Punchoo Das, he should have been nonsuited.

The plaintiff, in reply to the above answers, stated that Jugbundoo Das's denial, that the notice had been served on him was refuted by the evidence of the peadah and the witnesses present when it was served; and that, as the property was acquired by Kasseenath Das, and was not hereditary, there was no necessity for his suing Rugoonath Das at all, but he had so, as he attested the *kutkubalah*, lest objections should be urged, if he had not done so; and with regard to the name of the widow of Rugoonath Das, it did not signify whether she called herself Narring Dey or Sonah Dey, as she was made defendant, as the wife of Rugoonath Das, who also went by the name of Jugurnath Das.

The principal sudder ameen held that the execution of the *kutkubalah* by Kasseenath Das, as well as the countersignature of it on the part of Rugoonath Das, and the serving of the notice on Jugbundoo Das, for himself and as mohafiz of his younger brothers, was fully proved by the witnesses and documents adduced by the plaintiff; and that the insertion of the name of Jugurnath in place of that of Rugoonath Das in the kazee's certificate, was merely an oversight; and he decreed the claim with wasilat from the 12th Jeit 1254 U., together with costs and interest to the date of possession, and ordered a copy of his decree to be sent to the revenue authorities, with the view to the plaintiff's name being recorded as proprietor in the collector's records.

Against the above decision Jugbundoo Das, defendant, appealed, reiterating the objections made by himself and Sonah Dey or Narring Dey before the lower court.

JUDGMENT.

Although the widow of Rugoonath Das stated that her name is Narring Dey and not Sonah Dey, and that the name of Kasseenath Das's youngest son is Bulram Dass and not Punchoo Das, Jugbundoo Das, the eldest son of the said Kasseenath, does not deny that the

name of his youngest brother is Punchoo Das, as he doubtless would do if it was Bulram Das; but whatever may be the real names of the said individuals, I consider of little consequence in the present instance, as the plaintiff sued Sonah Dey as the widow of Rugoonath Das, and Jugbundoo Das as the mohafiz of his two minor brothers, as well as himself as a principal, and both parties entered appearance, and, after filing answers to the plaint, omitted to adduce any proof whatever in support of their assertions; whereas, on the other hand, the statement of the plaintiff has been established by the testimony of his witnesses. It appears, moreover, from the records of the court, that Kasseenath Das previously executed two *kuthubalahs* in favor of the plaintiff, one on the 24th Shahrizad 1245 U., and the other in renewal of the first on the 13th Jeit 1247 U.; and it is proved by the plaintiff's witnesses that the *kuthubalah* the cause of action, was likewise executed by Kasseenath Das, in renewal of the second one, and that it was countersigned by his brother, Rugoonath Das: and in the certificate of the kazee it is recorded, that Jugurnath Das, *the brother of the seller*, was present at the time of registry. Therefore, although the appellant objects that the evidence of the three witnesses to the kubalah, who deposed that the document was written at the "Kuddum Russool" musjid, where the kazee attested it, is at variance with that of two other witnesses, who stated that it was written at the plaintiff's house in the Telinga bazar: the former were witnesses to the registry, and the latter were not, and I do not consider such a discrepancy sufficient to invalidate the document, for the former witnesses may have forgotten the exact place where it was written, or have named the Kuddum Russool as the place, without giving the subject much thought in consequence of its having been registered there. And the defendant (appellant) does not allege that he redeemed the property, but altogether denies that Kasseenath Das executed either of the kubalahs referred to in the plaint; and such denial is, in my opinion, amply refuted by the existence of both the kubalahs before referred to. And as regards the plea of illness advanced by the appellant, I consider it inadmissible, because a period of no less than five whole months elapsed between the date on which he was directed to file his proofs and the decision of the case, and if he had been really ill, he could have forwarded any proofs he might possess through a third party to his vakeel. It is therefore ordered, that the appeal be dismissed, and that the decision of the principal sudder ameen be affirmed, without serving notice on the respondent.

THE 21st FEBRUARY 1850.

No. 3 of 1850.

Appeal from the decision of Seeb Persad Singh, Moonsiff of Cuttack, dated the 13th December 1849.

Ingernath Das, (Defendant,) Appellant

versus

Musst. Soobudra Dey, mother and guardian of Canoo Churn Das, son of Basoodeb Das, deceased, (Plaintiff,) Respondent.

CLAIM, rupees 130-8-11-10, principal and interest of tumusook, bearing date, the 7th Choit 1252 U., corresponding with the 18th March 1845.

The plaintiff stated that, on the above mentioned date, the defendant borrowed from her husband the sum of rupees 90, and executed the bond, and that on the death of her husband in 1255 U. the bond, together with the other property belonging to him, was made over to her charge as guardian for her son.

The defendant denied both borrowing the money and executing the bond, and alleged that the suit had been instituted against him in consequence of a quarrel having taken place between him and the plaintiff's husband and his brother, to whom he is related.

The moonsiff held that the execution of the bond was proved by the evidence of the attesting witnesses, and decreed accordingly; and finding such to be the case, I see no reason for interfering with his decision. It is therefore hereby ordered, that the same be confirmed, and that the appeal be dismissed, with costs, without serving notice on the respondent.

THE 21ST FEBRUARY 1850.

No. 19 of 1849.

Appeal from the decision of Tarakanth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated the 18th August 1849.

Gopeenath Puhraj, (Defendant,) Appellant,

versus

Muddoo Soodun Bose, (Plaintiff,) Respondent.

CLAIM, possession on talook Mehalpore, pergunnah Suknyc, on the grounds of a foreclosed deed of mortgage, dated the 19th September 1836, and the cancelment of the orders and arrangements subsequently passed and made respecting it: suit laid at rupees 704-9-10.

The particulars of this case are to be found in pages 18 and 19 of the Cuttack reports for February 1849, on the 26th of which month I reversed the decision of the principal sudder ameen, dismissing the claim of the plaintiff, dated the 29th April 1848, and, with instructions to the principal sudder ameen

to investigate whether the money lent on the deed of mortgage had been repaid or not; and on the 18th August last, he passed judgment in favor of the plaintiff. And against this last decision, Gopeenath Puhraj, defendant, has appealed, alleging that the plaintiff realised the whole of the amount due to him on the *kutkubalah*, during the nine years he was in possession of the mortgaged property, and if the principal sudder ameen had deputed an ameen to ascertain what sums had been collected by the plaintiff, he would have found that his statement was correct.

JUDGMENT.

From the petitions, dated the 29th April 1830, the 18th July 1832 and 5th August 1833, presented by the plaintiff to the collector, praying that the mortgaged property might be attached as he was unable to collect the rents, and had been obliged to borrow money to pay the Government revenue, in consequence of the mortgager Sadoo Churn Byreegunjan's interference with the ryots, in conformity with which the property was attached, as well as the *jumma-wasil-bakee* accounts for 1240 and 1241 U. furnished by the canoongoe to the collector, during the attachment, from which it appears that the gross mofussil demand on account of those years amounted respectively to Sicca rupees 696-7-2, and Sicca rupees 641-5-10, and that only rupees 531-12-9, and rupees 445-10-3½, were collected, whereas the sudder jumma of the estate was rupees 585-13-1, it is self-evident that if those accounts exhibit a true statement of the collections made from the property, the plaintiff was not only unable to realise any part of the sum due to him during those two years, but that he was a loser by the mortgage, and must have borrowed money to pay the Government revenue. Moreover, Sadoo Churn Byreegunjan, the mortgager, admitted in his petition of the 11th August 1834, to the collector, that the plaintiff, the mortgagee, had not realised any part of the money lent to him, in consequence of the opposition he had met with from his (the petitioner's) relations, who were gomashitahs and mohurirs on the property; and as nine years' profits of the estate according to the estimate recorded in the *kutkubalah*, viz., rupees 448-2-3 per annum, would aggregate only rupees 3,732, it is probable that the plaintiff did not realise the amount of the loan during the period of the mortgage. But as he relinquished the property at the end of that period, and did not petition under Section 8, Regulation XVII. of 1806, for the foreclosure of the mortgage, until nine years afterwards; and a 12 ahdas share of the property had in the meantime been sold by the heirs and relations of the mortgager to Gopeenath Puhraj, and the said individuals filed a petition in the *bai-bat* case, stating that the plaintiff had realised the amount of the loan in full, and had granted his receipt for the same which had been mislaid, though they have filed answers acknowledging judgment

in the present suit, it is not sufficient under such circumstances to assume that the conditions of the mortgage remain unfulfilled; but the plaintiff should have filed accounts to show what sums he did collect from the estate, and not merely assert that he had realised no part of the sum borrowed by the mortgager; and the principal sudder ameen should have called on the plaintiff to prove that the canoongoe's accounts for 1240 and 1241 were genuine, and have also deputed an ameen to ascertain what sums were realised by the mortgagee, during the period he was in possession of the property. Therefore, as I do not consider that the plaintiff has proved his claim, or that the investigation of the lower court is complete, I hereby cancel the decision of the principal sudder ameen, and again return the case, that he may proceed in the manner above indicated, and receive any further proof that either party may have to offer. The value of the stamp of appeal will be refunded as usual, and the costs will be defrayed by the party eventually cast in the suit.

THE 22ND FEBRUARY 1850.

No. 5 of 1850.

Appeal from the decision of Seeb Persad Singh, Moonsiff of Cuttack, dated the 11th December 1849.

Tuppanédhee Rajgeer Gosain, purchaser with part of Sirram Das,
(Plaintiff,) Appellant,

versus

Bhuggee Bhai, Narrain Das and others, (Defendants,) Respondents.

CLAIM, possession of a 15 gundahs, 3 cowrees, 1 krant share of Putna Gotmoo, pergunnah Jyepore, valued at rupees 5-4-8-19, with wasilat and interest: suit laid at rupees 114-4-11.

The plaintiff stated that Putna Gotmoo belonged to several joint proprietors, among whom his father, Puddun Das, held a 2 annas, 7 gundahs, 2 cowrees share, and that his father died, leaving two sons, by each of his two wives, viz., Kundroo Dass and Narrain Das by the one, and himself (the plaintiff) and Soodam Das by the other, and that they jointly succeeded to their father's share in the property; that Kundroo Das mortgated one-half of the said share, and sold the other half to Bhuggee Bhai during his and his brother's minority, and procured the signature of their mother, Juttee Dey, who was a *paqul*, or half-witted to the deed of sale, and presented a petition to the collector to cause the name of the purchaser to be recorded as the proprietor, when Narrain Das and Soodam Das filed a mozahim, and the dakhil-kharij petition was rejected, and the parties referred to the civil court; that Bhuggee Bhai, the purchaser, then sued Kundroo Das and others, in the moonsiff's court, and obtained a decree in consequence of Kundroo Das, and the plaintiff's mother, who represented herself to be the guardian of her sons,

having acknowledged judgment, and that the said Kundroo Das subsequently sold the remaining 1 anna, 3 gundahs, 3 cowrees share to Bhuggee Das, and in like manner as before got the plaintiff's mother to attest the kubalah; but as she was not of sound mind, and she approved of the sales during his minority, he had instituted the suit to recover possession of his share of the property.

Bhuggee Bhai, defendant, stated that he purchased on two different occasions the 2 annas, 7 gundahs, 2 cowrees share of Putna Gotmoo from the plaintiff, and Kundroo Das and others, and that on his suing the said parties in the moonsiff's court for possession, they acknowledged judgment, and he obtained a decree on the 5th May 1835; and that subsequently when he sued one Gungai Hatee for the rent of a portion of the land, the plaintiff and Narrain Das, in their petitions, presented to the collector on the 17th January, and to the moonsiff on the 26th July 1848, admitted that they had sold him their share in the property. He also denied that Musst. Juttee Dey was of weak intellect.

Narrain Das, for himself, and as guardian of Nund Das, stated that they were neither in possession of the disputed property, nor had they sold it, but that Bhuggee Bhai was in possession, and that it rested with him to answer the plaint.

The moonsiff held that, although the witnesses cited by the plaintiff had deposed, that Juttee Dey was half-witted, and that she sold the disputed property during the minority of the plaintiff, it was manifest from the statement of the plaintiff and his witnesses, that Bhuggee Bhai had bought the property and paid the purchase money, and his witnesses, on the other hand, had deposed that Juttee Dey was of sound mind, and that when Bhuggee Bhai sued Gungai Hatee first in the collectorate and afterwards at the moonsiff's court, for the rent of 3 goonths of land for 1254, the plaintiff and Narrain Das, both admitted the sale, though they opposed his claim on the grounds, that the land in question had been reserved by the sellers to be held free of rent; and as Sirram Das, after instituting the suit, had sold his claim to Raj Geer Gosain, who was unable to assign any reason why Sirram Das and Narrain Das made no mention of Juttee Dey's imbecility in their said petitions, presented to the collector, and the moonsiff on the 17th January and 26th July 1848, he dismissed the claim, with costs.

Against the above decision, Raj Geer Gosain appealed, reiterating the pleas made before the lower court regarding the imbecility of Musst. Juttee Dey, and the minority of Sirram Das at the time of the sale.

JUDGMENT.

Since Sirram Das, the original plaintiff, and his brother Narrain Das, in their petitions, presented to the collector on the 17th January 1848, and also in that filed in the moonsiff's court on the 26th July of the same year, after they had become of age, distinctly admitted

that the property in dispute had been sold to Bhuggee Bhai, the defendant, on the 9th Jeit 1246 U., corresponding with the 20th May 1839, and they then only claimed a right to hold 15 goonths of *khanabarree* land, free from assessment; the claim now preferred by Sirram Das to a share in the property is altogether inadmissible, and I therefore dismiss the appeal, and affirm the decision of the moonsiff, without serving notice on the respondent.

THE 22ND FEBRUARY 1850.

No. 2 of 1850.

Appeal from the decision of Seeb Persad Singh, Moonsiff of Cuttack, dated the 12th December 1849.

Appee Behra (Defendant,) Appellant,

versus

Musst. Sreemutty Shama Soondree Dassy, (Plaintiff,) Respondent.

CLAIM, rupees 5-7-5 rent, on account of the 8 annas kist of 1256, of 9 ms., 10 gs., 8 bis. of resumed lakhiraj land, in mouzah Nucheeopore, pergunnah Bakrabad, with costs and interest to date of payment.

The plaintiff stated that she had executed a kubooleut on account of the Government revenue of the resumed land in mouzah Nucheeopore, for 9 ms., 10 gs., 8 bis., of which the defendant Appee Behra held a pottah, and as she had paid the Government claim she sued him for the rent due for the land cultivated by him.

The defendant stated that the claim on the part of the plaintiff was false, and the whole of the resumed lakhiraj lands in Nucheeopore were the property of Jugernath Mullick, the plaintiff's husband, who in 1237 U. granted an *istee mraree* pottah of them to Sidha Phulharry Prem Das, from which year he had always paid him the rent of the portion which he cultivated.

The plaintiff replied that the defendant had paid the rent of 1255 to her, through the pergunnah canoongoe, as would be seen by referring to his accounts.

The moonsiff decreed the claim, on the grounds that the defendant acknowledged cultivating the land, the Government revenue of which the plaintiff was responsible for, and the defendant, though ordered to cause the re-attendance of his witnesses, when the courts opened after the Mohurram vacation, had failed to do so.

In appeal, the defendant urged that his witnesses had not been heard, and that the plaintiff should have sued Sidha Phulharry Prem Das, who held the *istee mraree pottah* from her husband, in place of him. Also that as the plaintiff had sued Sadoo Bural, a ryot, who cultivated another portion of the resumed land, conjointly with the said Sidha Phulharry Prem Das, the moonsiff should have deferred passing judgment in the present suit, until that case was

enquired into, and Prem Das had an opportunity of establishing his claim.

JUDGMENT.

It appears that the appellant stated, in answer to the plaint, that he rented the land in dispute from Sidha Phulharry Prem Das, who was in possession on the strength of an *istemraree pottah* granted to him in 1237 U. by Jugurnath Mullick, the husband of the plaintiff, from which time the appellant paid the rent to him; and in such case, it was in the first place necessary for the plaintiff to shew that she had been in the habit of collecting the rent from the appellant; but she omitted to adduce any proof whatever to this effect, and in support of her claim merely cited two witnesses to shew that she demanded the rent of 1256 U. now sued for from him; and of the said two witnesses, one stated that he did not know to whom the appellant paid the rent of 1254 and 1255 U., and the other, that he, at the telling of the plaintiff's mooktear, demanded the rent of 1256, but he could not tell what amount of rent was demanded; and he asked no questions regarding the former payments. And the circumstance of the appellant having paid rent to the canoongoe when the land in dispute was under attachment previous to settlement, affords no proof of the plaintiff's claim. It is therefore ordered, in consequence of the plaintiff's claim not being proved, that the decision of the moonsiff be reversed, and that the case be remanded, with orders to the moonsiff to restore it to its former place on his file, and after calling on both parties to furnish whatever proofs they may possess in support of their respective statements, to re-investigate it conjointly with the case instituted by the plaintiff against Sadoo Bural and Sidha Phulharry Prem Das, which has arisen out of the same cause of action, viz., the *istemraree pottah* alleged to have been granted to the said Prem Das by the plaintiff's husband. The value of the stamp of appeal will be refunded as usual, and the costs will be paid by the party finally cast in the suit.

THE 25TH FEBRUARY 1850.

No. 83 of 1849.

Appeal from the decision of Moheshchunder Roy, Moonsiff of Dhamnugur, dated the 15th August 1849.

Chundroo Misser and Hurry Misser, (Plaintiffs,) Appellants,

versus

Rugoonath Misser and Kulputroo Misser, (Defendants,) Respondents.

CLAIM, possession of a 6 annas share of a 9 annas kismut of mouzah Soodampore, with wasilat and interest from 1251 to 1255 U.: suit laid at rupees 70-8-5-6.

The plaintiffs state that their own and the defendants' ancestors, Juggoo Misser and Bhaigrutty Misser, who were brothers, lived together and held joint possession of their patrimonial property, and that the former died, leaving three sons, Rugoonath Misser, Chundroo Misser and Gopeenath Misser, who lived with Bhaigrutty Misser, and that they on various occasions purchased 10 $\frac{1}{16}$ ths of mouzah Soodampore, viz. 4 annas on the 28th Jeit 1233, 4 annas on 19th Bysack 1235, and 2 annas on the 13th Cheit 1236, which Rugoonath Misser, the eldest of the three brothers, caused to be recorded in the name of his son, Kulputroo Misser; that on the death of Gopeenath Misser in 1237 U. he was succeeded by his sons, Hurry Misser and Uppertee Misser, at which time Bhaigrutty Misser separated from the other members of the family, the plaintiffs and Rugoonath Misser, who continued to live together, and on the 29th Bysack 1239 U. purchased other 4 annas of Soodampore, and caused it also to be recorded in the name of Kulputroo Misser; and that some time afterwards Bhaigrutty Misser sued Rugoonath Misser and themselves for a half share of the 10 annas of mouzah Soodampore, and 3 beegahs of Sohundee, purchased before his separation from the rest of the family, and a quarrel having at the time taken place between them, the plaintiffs and Rugoonath Das, they likewise separated from him, and filed an answer acknowledging the correctness of Bhaigrutty's claim, and a decree was passed accordingly: and they were also about to sue for their share in the property when Rugoonath Misser and Kulputroo Misser dissuaded them from doing so, and cajoled them again to live with them, and on the 15th Srabun 1250 U. executed an *hissanamah* in which the plaintiffs were recorded as proprietors of 6-16ths of the 9 annas kismut of Soodampore, which remained recorded in the name of Kulputroo Misser, viz. the 5 annas purchased up to 1236, and the 4 annas purchased in 1239 U., and they held joint possession with the defendants till the month of Maugh 1251 U., when the defendants dispossessed them, and they in consequence sued for possession of the said 6 annas share, which, according to the arrangement made at the time the property was under *butwarah*, whereby the 9 annas kismut had been formed into an integral estate, had been converted into a 10 annas, 13 gundahs, 1 cowree, 1 krant share.

Rugoonath Misser, defendant, denied that the property was purchased with the joint funds of Juggoo Misser and Bhaigrutty Misser, and stated that 10 annas of mouzah Soodampore were purchased conjointly by himself and Bhaigrutty Misser, and the other 4 annas by him alone, and that when the first 4 annas share was purchased in 1233, he wished the other members of the family to join in the purchase, but they declined to do so; and when Bhaigrutty Misser after his separation from him sued in the civil court for a half of the said 10 annas share; the plaintiffs filed an answer stating that they were not in possession, but that he, Rugoonath Misser, was, and prayed that they might be released from the claim made against them, &c.

The moonsiff held it to be established that the 10 annas share of the property in dispute was purchased when the plaintiffs and defendants and Bhaigrutty Misser lived together, the last named individual having obtained a decree for a half share thereof; but that it had not been satisfactorily proved that the plaintiffs and defendants were living together, when the last 4 annas share was purchased in 1239 U., for not only had the defendants' witnesses deposed to their separation in 1237 U., but the plaintiffs themselves admitted that Rugoonath Misser had separated from them, when they were about to file an *ikrarry jawab* in the suit instituted by Bhaigrutty Misser, and he considered the *hissanamah*, bearing date 15th Śrabun 1250 U., filed by the plaintiffs to be a forgery. He therefore was of opinion that Chundroo Misser and Gopeenath Misser, the father of Hurry Misser and Uppertee Misser, were originally entitled to a share of the 10 annas first purchased, and although the claims of Chundroo Misser and Gopeenath Misser were barred by the statute of limitations, twelve years having elapsed between the 8th April 1836, the date of the answer filed by the plaintiffs in the suit instituted against them by Bhaigrutty Misser, in which they stated that they were not in possession, and the first institution of the present suit, that of Hurry Misser and Uppertee Misser, the *heirs* of Gopeenath Misser, was cognizable according to Construction No. 942, and he consequently dismissed the claim of Chundroo Misser, and decreed a 1 anna, 13 gs., 1 c., 1 kt. share, out of the 10 annas, 13 gs., 1 c., 1 kt. share in the possession of the defendants, in favor of Hurry Misser and Uppertee Misser, together with wasilat and proportionate amount of costs, and further ordered that half of the defendants' expenses were to be paid by Chundroo Misser.

Against the above decision Chundroo Misser and Hurry Misser appealed, claiming the whole of the property sued for.

JUDGMENT

It is not disputed by the plaintiffs that, in their answer, bearing date the 8th April 1836, filed in the suit instituted by Bhaigrutty Misser against them, and Rugoonath Misser and his son, Kulputroo Misser, claiming a half share of the 10 annas of mouzah Soodampore, and 3 beegahs of Sohundee, said to have been acquired when they were all living together, they stated that, up to the date of the said answer, they had never been in possession of the property now in dispute, and that it was their intention to sue Rugoonath Misser for their share in the same; and it is evident that between the date of the said answer and the first institution of the present suit, upwards of twelve years had elapsed, it is therefore necessary to ascertain whether the plaintiffs, during the intervening period ever held joint possession of the property with the defendants, or whether the latter ever acknowledged their proprietary title; and, if they did not, does the law of limitation prescribed by Section 14, Regulation III. of 1793, apply to their case

or not? As regards the first question, I can find no credible evidence to support the plaintiffs' assertion, that they were in possession from 1250 to Maugh 1251 U.; and I agree with the moonsiff in considering the hissanamah of the 15th Srabun 1250 a counterfeit document, for the plaintiffs not only admit that they had separated from the defendants in 1236 U., and they have adduced no proof whatever to shew why or when Rugoonath Misser again took them to live with him, or that the property was originally purchased with their joint funds; but it is manifest from the evidence of the defendants' witnesses that no re-union took place between them, and that they have lived separately for the last twenty years, or from 1237 U. I am consequently of opinion that the claims of both Chundroo Misser and Hurry Misser and Uppertee Misser are entirely barred by the statute of limitations, for whether they originally had any title to the property or not, they knowingly omitted to sue for possession for upwards of twelve years, and it has not been asserted that the defendants obtained possession by fraud or violence, so as to bring the case within the provisions of Section 3, Regulation II. of 1805. I am also of opinion that the moonsiff has misunderstood the meaning of Construction No. 942, in part decreeing the claim of Hurry Misser and Uppertee Misser, on the ground that it was founded on a title of inheritance, for a son cannot inherit a property to which his father never established any proprietary title, and of which he was never in possession; and as Hurry Misser and Uppertee Misser, conjointly with Kundroo Misser, filed the answer alluded to in the suit instituted by Bhaigrutty Misser, the law which is applicable to the one is applicable to the other also. But as no appeal has been preferred on the part of the defendants from the moonsiff's decision decreeing a 1 anna, 13 gs., 1 c., 1 kt. share in favor of Hurry Misser and Uppertee Misser, notwithstanding they were offered an opportunity of preferring one in conformity with Construction No. 1048, it cannot be interfered with, though it is evidently opposed to the other part of his decision, dismissing the claim of Chundroo Misser. It is therefore ordered, that the appeal of both appellants be dismissed, with costs.

ZILLAH DACCA.

PRESENT: H. SWETENHAM, ESQ., JUDGE.

THE 5TH FEBRUARY 1850.

No. 37 of 1847.

Appeal from the decision of Syed Abbass Allee, Principal Sudder Ameen of Zillah Dacca.

Radamadhub Raee *alias* Anund Chundur Raee, (one Defendant,) Appellant,

versus

Sumbhoonath Raee, (Plaintiff,) Respondent.

Names of Defendants who have not appealed, Raj Chundur Doss, Kishen Chundur Ghose, Umursunkur Raee, on his demise, Radhakishen Raee and others, and Neelmadhub Ghose.

Vakeels of Appellant—Ameerooddeen and Rammunee.

Vakeel of Respondent—Juggomohun Petamber.

SUIT to recover rupees 3,631-4-6.

The plaint stated Radhamadhub Raee was indebted by decree to George Lamb, Esq., Sicca rupees 3,221. To discharge that debt, he in the name of Neelmadhub Ghose farmed his zumendaree tuppeh Kamrapore, &c., to Sumbhoonauth, Doctor Lamb's dewan, for three years, *i. e.* from Poos 1240 to Aughun 1243, yielding net rent 1,277 rupees per annum. On the 25th Poos 1240, Radhamadhub Raee retook the said property in re-lease, *dur-i-ijarah*, in the name of his gomastah, Raj Chundur Doss, on security of Umur Sunkur Raee, Neelmadhub Ghose, and Kishen Chunder. Radhamadhub Raee, in the name of Umur Sunkur Raee, his maternal uncle's son, bought Doctor Lamb's decree, he became representative decree-holder and realized the amount of the decree for plaintiff's lien in the property *manut burat*.

Plaintiff stated, when, according to the instalment and release agreement, he was not paid, he was prepared to sue the farmer and his sureties, but rupees 550 were paid the 17th Poos 1241, subsequently he sued summarily for

Rupees	573	4	4	Assin to Maugh 1241, with interest.
	1,363	8	11	Aughun 1242 to Assin 1243, ditto.
	295	4	13	Aughun 1243 ditto, ditto.

These sums were respectively decreed by the collector, portion thereof was realized, there remain due

Rupees	1,300	9	3	1	on the decree,
	113	6	8	3	rent 1240,
	2,217	4	6	0	ditto Cheyt 1241 to Assin 1242,
					with interest,
Total,	3,631	4	6	0	for which he sues.

Raj Chundur, defendant, admitted the lease and re-lease, but denied possession under the latter. Radhamadhub denies his responsibility for the acts of Neelmadhub Ghose, who was in possession under orders of the criminal court, before the period of the alleged ijarah; Umur Sunkur purchased Doctor Lamb's decree, the demand on it has been extinguished.

The principal sudder ameen, in delivering judgment, stated, Radhamadhub was and is the actual proprietor of the lands farmed and re-farmed, as appears from the tenor of the lease and agreement, dur-i-ijarah, and as is proved by the evidence of three witnesses, Ram Jadoo, Gooroopershaud, and Rajkishore, and as is admitted by the vakeel, *vide* roobakaree, 10th November 1846. He therefore decreed the amount claimed against all the defendants, 10th August 1847.

Radhamadhub appealed, principally on the plea that he did not lease the property, that Neelmadhub did, for whose act he was not responsible. This plea is answered verbally by the respondent's vakeels to effect that Neelmadhub is a fictitious name, fraudulently assumed by Radhamadhub, a fact admitted by the Sudder Dewanny Adawlut. This fact was considered the point at issue. The respondent was directed to file the decree of the Sudder within a week from the 7th August 1849: appellant to refute the fact.

The case being called up this day, respondent brings forward a decree of the Sudder Dewanny Adawlut, Neelmadhub Ghose, appellant; *versus* Kishen Chundur, respondent, bearing date the 10th August 1843: in it is established the fact which was declared for determination. The decision of the principal sudder ameen therefore is affirmed, and the appeal dismissed. Respondent was not summoned.

THE 6TH FEBRUARY 1850.

No. 11 of 1848.

*Appeal from the decision of Syed Abbas Allee, Principal Sudder Ameen of Zillah Dacca.*George Lamb, Esq., (Plaintiff,) Appellant,
*versus*Musst. Joidoorgah Chowdrine, widow of Essan Chunder, son of
Kirtnarain Chowdry, (Defendant,) Respondent.
Shib Chunder, Opponent.Shib Chunder, Mohes Chunder Goput, and George Henry Lamb,
Esq., Opponents in the Court of the Principal Sudder Ameen.*Vakeels of Appellant—Juggomohun and Petumber.**Vakeel of Respondent—Nundlaul.**Vakeel of Shib Chunder—Rasbeharee.*

SUIT for possession of 15 dhoons of land, or 8 annas share of Chur Meer Kundee, valued at rupees 1,200, and mesne profits 1,335, total Sicca rupees 2,535, Company's rupees 2,704.

Plaintiff states: The zumeendaree of pergunnah Shampore, muhul Khalsa, named Nurnarain Raee, sudder jumma rupees 3,626-10-8, payable in zillah Tipperah, was exposed to sale for arrears of revenue on the 7th Maugh 1241 B. S. Plaintiff purchased the zumeendaree for rupees 25,000, and obtained possession. Chur Meer Kundee, situated in the Dacca district, appertains to that zumeendaree, 8 annas share in the said chur was made over to the plaintiff, but 8 annas share was surreptitiously withheld by Kirtnarain. Plaintiff was not aware of the fact at the time, and has been kept out of possession 11 years, 1 month, and 15 days, although he pays the revenue of it. The said chur is bounded on the north by lands of Meer Kundee, on the south by kismut Shabdee, on the east by the river Berhampooter, and on the west by a Meergungee.

Defendant answers: Pergunnah Bundur Iqrampoor is the name of Kirtnarain's hereditary zumeendaree, entered in the name of Myaram Chowdry in the Dacca collectorate, kismut Tumturdee and chur Meer Kundee are contiguous: the former 8 annas appertains to Bundur Iqrampoor, the latter 8 annas belongs to Shampore, and it was given over to the plaintiff as auction purchaser, the other 8 annas share, my hereditary property, was successively in possession of Myaram, then his son, Kirtnarain, after him his son, Esan, and now myself. The former zumeendars of Shampore never preferred claim to these 8 annas share, nor did the talooqdars, Mirtunjee Sein and his heirs, nor has the purchaser of Shampore claimed for 12 years.

Shib Chunder Doss, opponent, states Doctor Lamb has no claim to the 8 annas share sued for, as he had given him an hereditary and transferable lease, the 12th Asar 1244, for all the chur Meer Kun-

dee at 7 rupees per annum, and, on an investigation under Regulation II. 1819, the chur was surrendered to him on the grounds of that deed. Mohes Chunder opposed, that the boundaries stated by plaintiff intersected portion of his lands. Mr. G. H. Lamb claimed the chur as his separate property.

The principal sudder ameen declared the claim of plaintiff inadmissible. The whole chur appears leased for rupees 7, under a pottah granted by the plaintiff with liberty to gift or sell. The pottah is admitted, dakhilas prove payment of the amount stipulated. Plaintiff cannot sue for possession. Strange to say, of the pottahdar or lease-holder, plaintiff makes no mention. The special deputy collector of Mymensingh proposed to assess this chur, but released it to the talooqdar, Shib Chunder, on proof of his right thereto. Mr. Henry Lamb's claim is not admissible more than his father's. Mohes Chunder's claim requires not investigation. Doctor Lamb's claim is dismissed, 17th April 1848.

In appeal, it is pleaded that Doctor Lamb gave to Shib Chunder a pottah of 8 annas share of Meer Kundee, all he possessed, the remainder was in the occupancy of another person, and he could not give what he did not possess.

On perusal of the pottah it appears, the whole chur is expressed in it without reservation or allusion to any other portion in or out of possession, moreover, the pottah yields to the lease-holder any increments that might thereafter accrue. Appellant's claim rests principally on a quinquennial statement and the result of an ameen's investigation. But the boundaries defined by the appellant in his plaint identify the disputed ground with the chur of which possession was awarded under Regulation VI. of 1813, on the 25th June 1817. In proceedings of that date, the ancestors of the respondent and of Shib Chunder, opponent, were declared to have been in possession 20 or 25 years before 1221 B. S., therefore they were retained in possession by those proceedings, and they have continued in uninterrupted possession ever since to date of institution of this suit in the principal sudder ameen's court, viz. 5th March 1846.

The appeal is therefore dismissed, the principal sudder ameen's decision is affirmed; appellant to bear the costs.

THE 7TH FEBRUARY 1850.

No. 12 of 1848.

Appeal from the decision of Syed Abbas Allee, Principal Sudder Ameen of Zillah Dacca.

Gooroopershaud Rae, (Plaintiff,) Appellant,

versus

Buddeen Meean *alias* Mahomed Ghuor, Nuthoo Meean, Musst. Zumeenuh Khatoon, widow of Kulloo Meean, Mussumaut Woozeerunnissa Begum, widow of Abdool Ghufloor, and Musst. Zumurudeennissa Begum, widow of Abdool Shufloor, (Defendants,) Respondents.

Wukeels of Appellant—Anundmohun and Bungo Chunder.

Wukeels of Woozeerunnissa—Luckheekaunth and Juggernaut.

Other Respondents defaulting.

SUIT to recover rent with interest rupees 1,587-14-10.

Plaintiff stated the zemindaree pergunnah Rusoolpore, 5 annas share, the property of Zuheerooddeen, sudder jumma rupees 3,645-7-2 $\frac{1}{2}$, was exposed to sale for balances of revenue, and he purchased on the 10th Maugh 1240, and now sues for rent from date of purchase to Poos 1252, eleven years, eleven months, and twenty days, at the rate of rupees 74-14-9-1 per annum, rupees 896-12-4-1, and interest rupees 591-14-17-3, total Sicca rupees 1,488-11-2, or Company's rupees 1,587-14-10,²—the rates being regulated by a quinquennial statement.

Woozeerunnissa Begum answered, plaintiff overcharged defendants, they had always been willing to pay their proper rents. The talooka 16 annas jumma was rupees 194, deduct separated 5 annas, there remain 11 annas, out of 16 annas of the remaining 11 annas, plaintiff is proprietor of 5 annas and our rents thereon average Sicca rupees 60-10 per annum.

Oomur Jaun is proprietress of 4 $\frac{1}{2}$ annas, she sued Buddeen Meean in the court of the principal sudder ameen of Furreedpore, specifying the whole jumma rupees 194, and her share rupees 54-9, decree passed thereon. In execution thereof all the talooka was exposed to sale, and I purchased it for rupees 1,705, the 25th Sawunt 1249, in my husband's name, but with my own money. I held all the talooka in possession. I offered the rent at the average jumma to the plaintiff, he refused to accept, therefore he has no right to claim interest, all the other shareholders receive rent at that rate, and Oomur Jaun sued at that rate.

Nuthoo Meean answered to the same effect.

The principal sudder ameen laid down the point to be proved, viz, plaintiff to prove the annual rent rupees 74-14-9-1; defendants

to prove rupees 194, the rent of 16 annas share, and passed judgment as follows:

The plaintiff has failed to prove the rent he claims. The quinquennial statement produced is without year or date, nor does it appear by whom it was filed in the collectorate. The sudder jumma in it is stated rupees 56-2-19-1, the *theet* 74-14-9-1. Four witnesses upheld the plaintiff's claim, but their evidence unsupported by written proof is insufficient.

Defendants have filed a decision (of my own) Oomur Jaun, for rent of $4\frac{1}{2}$ annas share: she claimed a portion on the aggregate jumma of rupees 194, and obtained a decree, how can a different rate be now assumed? A meeras pottah, dated Poos 1194, rupees Arcot 201, a byenamah, 26th Maugh 1249, of talook Mahomed Roushun, and mooktearnamah signed by Afsurooddeen and others, zemindars, dated 13th Maugh 1251, specify the jumma rupees 194, and the statements in the said documents have been proved by seven witnesses.

Rammohun Baboo, additional principal sudder ameen, on the 16th November 1841, reversed the kubooleut taken by the plaintiff from certain of the cultivators, the farmer having attempted to make the lands khas.

The whole jumma is proved rupees 194, therefore the principal sudder ameen decrees in conformity to the decree passed by the principal sudder ameen of Furreedpore, the 30th May 1840, in manner following:

From 12th Maugh 1240, to 24th Sawunt 1249, eight years, six months, fourteen days, at rupees 60-10 per annum, Sicca rupees 517-13-8 $\frac{1}{2}$, Company's rupees 552-5-9 $\frac{1}{4}$, with proportionate costs and interest from date of institution of suit to date of decree and interest on the aggregate amount decreed from date of decree to date of realization, against the heirs of Mahomed Roushun, that is to say, Buddun Meean and others, the defendants, and from Sawunt 1249 to Poos 1252, three years, five months, six days, Sicca rupees 208-2-5 $\frac{1}{2}$, Company's rupees 222-0-11 $\frac{1}{2}$, with proportionate costs and interest from date of institution of suit to date of decree, and interest on the aggregate amount decreed from date of decree to date of realization against Woozeerunnissa Begum.

Costs on the excess claimed by plaintiff chargeable to plaintiff, 28th April 1848.

Plaintiff appeals, maintaining his claims of rent according to the quinquennial statement, which was not satisfactorily authenticated, objecting to the allotment of the amount decreed, and claiming interest from the date the balance accrued. But no just grounds are adduced to warrant any interference with the decision of the principal sudder ameen, which is accordingly affirmed, the appeal is dismissed with costs.

THE 15TH FEBRUARY 1850.

No. 8 of 1848.

Appeal from the decision of Moulvee Abdoolah, late Sudder Ameen of Zillah Dacca.

Aka Gholam Allee, (Defendant,) Appellant,
versus

Ram Chunder Bose, (Plaintiff,) Respondent.

Vakeels of Appellant,—Anund Mohee and Petamber.

Vakeel of Respondent—Gour Chunder.

SUIT to recover possession of 8 kancee, 9½ gundah of land, kismut Kooreegaon, valued rupees 457-8, and mesne profits rupees 9-15-4½; total rupees 467-7-4½.

In this case the only point at issue is, whether the lease, a hawla pottah, under which plaintiff claimed, was permanent and hereditary, or temporary.

The sudder ameen judged it permanent and hereditary from the documents, evidence, and circumstances of the case, and nothing is adduced in appeal to impugn the correctness of his judgment. The appeal is consequently dismissed with costs, the decision of the late sudder ameen affirmed.

THE 18TH FEBRUARY 1850.

No. 11 of 1848.

Appeal from the decision of Moulvee Abdoolah, late Sudder Ameen of Zillah Dacca.

Sreenauth Chuckerbuttee and Kallynauth Chuckerbuttee,
 (two Defendants,) Appellants,
versus

Ooday Chundur Chuckerbuttee and Goureonauth Chucker-
 buttee, (Plaintiffs,) Respondents.

Sheikh Banna Oollah, Defendant, has not appealed.

Vakeels of Appellants—Nundlal and Puddumlochun.

Vakeels of Respondents—Ameerooddeen, Luckhee Kaunth and Rughoonauth.

SUIT to recover damages for defamation, laid at rupees 800.

Awarded by the late sudder ameen rupees 150. Appeal against the amount decreed.

The litigating parties stand in the relationship of uncles and nephews. The case amounts only to a misdemeanour, consisting of a little abusive language and inconsiderable assault punishable by a trifling fine or brief imprisonment by the magistrate, under Section 8, Regulation IX. 1793, and not actionable.

The appeal is decreed, decision reversed, parties to pay their respective costs.

THE 19TH FEBRUARY 1850.

No. 295 of 1849.

Appeal from the decision of Imdad Allee, Moonsiff of Poragacha.

Kalleo Kishen Deeghal, (one Defendant,) Appellant,

versus

Chustae Kareegur, (Plaintiff,) Respondent.

Appellant, defaulting.

SUIT for rupees 16, forcibly taken, decreed by moonsiff 6th September 1849. A short petition of appeal was filed 19th October, no further proceedings adopted. Appeal dismissed under Act XXIX. 1841.

THE 19TH FEBRUARY 1850.

No. 332 of 1849.

*Appeal from the decision of Kallee Kinker Sein, late Moonsiff of Narain-
gunge.*

Ramnur Singh Chuckerbutty, (Plaintiff,) Appellant,

versus

Kishen Chunder Gungolee, (Defendant,) Respondent.

Appellant, defaulting.

SUIT to recover interest of a conditional deed of sale, Sicca rupees 26-8, Company's "rupees 28-3-9.

Dismissed by moonsiff 7th November 1849.

A short petition of appeal was filed the 5th December, and no further proceedings adopted. The appeal is dismissed under Act XXIX. 1841.

THE 19TH FEBRUARY 1850.

No. 294 of 1849.

Appeal from the decision of Imdad Ally, Moonsiff of Poragacha.

Kallee Kishen Deeghal, (one Defendant,) Appellant,

versus

Meer Chaund Kareegur, (Plaintiff,) Respondent.

Appellant, defaulting.

SUIT to recover rupees 16, forcibly taken.

Decreed by moonsiff 6th September 1849.

A brief petition of appeal was filed 19th October. No further proceedings have been taken in the case, which is consequently dismissed under Act XXIX. 1841.

THE 19TH FEBRUARY 1850.

No. 1 of 1848.

Appeal from the decision of Moulvee Abdoollah, late Sudder Ameen of Zillah Dacca.

Luckhcenarain Bysack, (Plaintiff,) Appellant,

versus

Hurreehur Raee and Kishen Chundur Raee, (Defendants,) Respondents.

*Vakeel of Appellant—Nundlal.**Vakeel of Respondents—Juggomohun.*

SUIT for possession of land, under deed of mortgage foreclosed, and conditional sale rendered conclusive, together with mesne profits rupees 796-5½.

Plaintiff sets forth, that Koornamoe's husband, Surroop Chundur Sein, and his co-sharers, Bishenpershaud and Burrub Chundur Sein and others, held, in hereditary tenure, talook tuppeli Shureefpore, Huzar Chunduh, in the name of Bhowance Sunkur Raco and others, zimma Durpnarain Raee, collectorate Dacca Jullalpore, sudder jumma Sicca rupees 1,855-6, therein Ram Doss Raee and others had share jumma Sicca rupees 483-4, and Surroop Chundur Sein and others share rupees 1,372-6. In that jumma were mouzahs Saderchur and Chunsudar, jumma rupees 241-10, of these two mouzahs Koornamoe's husband, Surroop Chundur Sein, was proprietor of 2 annas, 10 cowrees share, jumma rupees 32-1-9, a moiety thereof 1 anna, 1 gundah, 1 cowree, jumma rupees 16-14-2. On the 6th Jeit 1238, Koornamoe conditionally sold to plaintiff for rupees 400, excepting the dewuttur and lakhiraj, &c., for the purpose of paying debts, but she retained possession. Plaintiff executed an agreement to restore his lien if she repaid the amount within a year, she failed: therefore, under Regulation XVII. 1806, plaintiff proceeded to foreclose, on the 30th November 1835, the sale became conclusive. Koornamoe is deceased, therefore plaintiff sued her heirs for possession. The land was valued rupees 500, and mesne profits from 30th November 1835 to 30th Maugh 1252 B. S., ten years, two months, fifteen days, at rupees 29 per annum, rupees 2,465½.

Hurreehur Raee answered, Koornamoe was a childless widow, and had not power to alienate her husband's real property; but, in fact, she had not done so. Plaintiff sued after sixteen years from date of transfer.

Plaintiff replied, Koornamoe sold justifiably for expenses for her husband's funeral rights and her daughter's marriage. Defendants had not offered objections under the notification for foreclosure and for mortgage. There was no limitation for suing.

The rejoinder denied the alleged grounds for the sale. Surroop Chundur died two or three years before his widow sold, her child

was married from the profits of the land. Defendants had never seen or heard of the notification.

The sudder ameen considered plaintiff's claim, for several reasons, inadmissible.

First.—Three witnesses failed to prove the deed of conditional sale and payment of rupees 400, their depositions are quite at variance. Raminanick Singh, witness, deposed that Pran Sikdar had the qubalah written in plaintiff's house at Dacca, that he took the deed and rupees 400 to Koornamoe's house, paid the money and got her signature.

Pran Kishen Doss witness deposed, no cash was paid, the deed was written in satisfaction of the debt of Surroop Chunder and his brother Sumbhoo Chunder.

Ram Kishwur witness was called by plaintiff, who dispensed with his evidence, but deposed at the request of defendants, and stated Koornamoe received cash rupees 128, and, allowing for former debt, she executed the deed for rupees 400. Four months elapsed and plaintiff produced no further proof nor other witnesses.

Secondly.—Koornamoe Hurbceera could not legally alienate the property.

From the deed of conditional sale, from the plaint, or from the deposition of plaintiff's witnesses, it is not apparent for whose debts the alleged sale was made. From the evidence of defendant's witnesses it is proved, the husband of Koornamoe was wealthy and that she was after his death in good circumstances, and gave her daughter in marriage. He accordingly dismissed the suit 13th January 1848.

Plaintiff has appealed, but the decision is not open to imputation. Appellant's pleas do not impugn it. The appeal is dismissed, and the sudder ameen's decision confirmed.

THE 20TH FEBRUARY 1850.

No. 144 of 1848.

*Appeal from the decision of Kally Kinkur Sein, late Moonsiff of Narain-
gunge.*

Rajkishore Bose and Ram Chunder Bose, (Defendants,) Appellants,
versus

Ram Juggurnauth Bose, (Plaintiff,) Respondent.

Vakeels of Appellants—Nundloul and Juggurnauth.

Vakeels of Respondent—Gokool Chunder and Puddumlochun.

SUIT to recover rent with interest, rupees 30-7-7.

Decreed by moonsiff rupees 19-12-4. The case was read in appeal on the 16th May 1849, one vakeel only for appellants, Juggurnauth, being present, and the moonsiff's decision was confirmed,

no grounds for interference being then apparent. Subsequently, Nundlaul vakeel represented that Juggurnauth was vakeel of one appellant, that he was vakeel for both, and that he had documents to prove that the rent decreed had been previously paid to Government and to the zumeendar. Finally, review of judgment was sanctioned by the Sudder, the 24th August 1849.

Under these circumstances the appeal is decreed, the moonsiff's decision of the 8th May 1848 is reversed, the suit is remanded in order that the moonsiff of Naraingunge may investigate the plea in appeal above noticed, and then decide the case on its merits. The value of the stamp paper of appeal to be returned to appellants.

ZILLAH MIDNAPORE.

PRESENT: W. LUKE, ESQ., JUDGE.

THE 4TH FEBRUARY 1850.

No. 182.

*Appeal from a decision of the Moonsiff of Pertabpore, Golam Soobhan,
dated 25th June 1849.*

Radachurn Mytee, (Plaintiff,) Appellant,

versus

Mudhoosoodhun Munna, (Defendant,) Respondent.

THE plaintiff sues for a balance of rent, rupees 29-7-12. He represents that, in right of a decree passed by the Sudder Court, he obtained possession of two tanks and their appendages, measuring 65 beegahs and 10 cottahs; that defendant entered on a lease of beegahs 8, pertaining to the tank, and granted him a counterpart; and that defendant is a defaulter for the years 1254 and 1255 Umlee.

The defendant denies his liability, and pleads that he never cultivated a beegah of plaintiff's land, and that the kubooleut is a forgery.

The moonsiff gives a verdict for defendant, the cause of action having been previously heard and determined by a court of competent jurisdiction.

From the records of the case it appears that plaintiff obtained a decree for two tanks, said to comprise an area of 65 beegahs and 10 cottahs. Plaintiff sued out the said decree and acknowledged possession. He subsequently applied for an adjustment of wasilat, and an ameen was deputed to ascertain the produce of the property within the limits defined in the decree. The result of the ameen's inquiry shewed that the area within the boundaries, as stated in the decree, were in the aggregate 50 beegahs and 7 cottahs and not 65-10, of which plaintiff had previously admitted he had obtained possession, of these 50-7 the ameen prepared and submitted to the court a wasilat. The plaintiff raised sundry objections relative to the boundaries, which were overruled by the court. The plaintiff then preferred an appeal to the Sudder, which was struck off the file on default. The plaintiff subsequently filed sundry miscellaneous petitions to the same intent without effect. He now seeks to gain possession of the difference between the quantity of land specified in

the decree, and the result of actual measurement, by suing defendant for a balance of rent. The cause of action having once before been determined on, it cannot be revived in a fresh suit, as is obviously intended by the plaintiff.

There is no reason to interfere with the decision of the lower court, which is hereby affirmed, and the appeal dismissed, without serving a notice on the respondent.

ZILLAH MOORSHEDABAD.

PRESENT: D. J. MONEY, Esq., JUDGE.

THE 18TH FEBRUARY 1850.

No. 23 of 1850.

Regular Appeal from the decision of Moulvee Momtaz Alli, Moonsiff of Gowas.

Panchoo Sheikh, (Defendant,) Appellant,

versus

Hurrochunder Gosain, (Plaintiff,) Respondent.

SUIT for the recovery of a bond debt of Sicca rupees 10, or Company's rupees 10-10-11, and interest 10, or Company's rupees 10-10-11, total Company's rupees 21-5-11, instituted 1st June 1849, and decided 31st December 1849.

The plaint sets forth that Gholamee Mistree borrowed Sicca rupees 10, and executed a bond for the amount in favor of the plaintiff on the 10th Chyte 1243 B. S., but died without liquidating the amount, leaving heirs behind him; that Panchoo Sheikh sold a garee and pair of oxen left by Gholamee for 22 rupees, and appropriated the amount to his own use; that the rest of his property was also sold, and the proceeds of sale appropriated in like manner; that he instituted a suit in the moonsiff's court, No. 51 of 1848, which, on account of his omission to include as defendants, the names of the heirs of Ruheem Mundul, Gholamee's son, was nonsuited on the 20th April 1848; that he rectified the omission and instituted the present suit for the recovery of the amount alluded to.

Panchoo Sheikh and Shoobanee Sheikh appeared, but filed no answer.

The moonsiff gave a decree in favor of the plaintiff.

The defendant, Panchoo Sheikh, appeals from this decision, on the ground chiefly that the moonsiff did not take evidence of the service of the processes of his court upon the wife of Ruhmanee, deceased, and Bechoo and Oosman Sheikh, before he decided the case against him, and that the property alluded to by the plaintiff was not left by Gholamee, but was his own.

No evidence appears to have been taken by the moonsiff regarding the serving of the notice upon the defendants agreeably to Section 21, Regulation XXIII. of 1814, and Construction No. 775; and the return of the nazir shews that the proclamation was not issued upon all the defendants after the serving of the notice. I therefore admit the appeal, and return the case for re-trial. The value of the stamp in appeal to be returned to the appellant.

THE 19TH FEBRUARY 1850.

No. 3 of 1844.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan Bahadoor, first grade Principal Sudder Ameen of Moorshedabad.

Kishen Chunder Chukerbuttery, Ijardar, (Defendant,) Appellant,
versus

Raja Kishen Chunder Bahadoor, late Zemindar of Pergunnah Gowas, (Plaintiff,) Respondent.

CLAIM for the recovery of arrears of rent, Company's rupees 1,379, 1 anna, instituted on 27th September 1842, decided 15th February 1844.

The plaintiff sets forth that the defendant had taken from the plaintiff an ijarah of turuf Bindabunpoor, adjoining hoodah Debi-pore, together with Rooknah Chunderpara in pergunnah Gowas, at an annual jumma of Company's rupees 2,338, 2 annas, 1 pie, for four years from 1244 to 1247 B. S.; that on the 1st Bysack 1244 B. S., the defendant executed a dowl kubooleut and security bond, Zomorud Ally Khan, nazir of Ameerunnessa Begum, standing security for him, and, having taken possession of the mehal in question, paid to the plaintiff on different dates Sicca rupees 1,350, 9 annas, leaving a balance of rupees 1,379, 1 anna, 9 pie unpaid, for which amount the plaintiff sued against him, and Ameerunnissa Begum, as possessor of all the property left by Zomorud Ally Khan, the defendant's security, with interest to the date of realization.

The defendant, Kishen Chunder, in his answer, admitted that he had taken an ijarah of the said mehals, but pleaded payment at different periods of the whole amount of rent, and states that the plaintiff in a purwanah given by him granted the defendant a remission of rupees 214, 6 annas, 4 pie per annum, until the farming lease expired; that the plaintiff held a benamee jumma in the said mehals, for which a certain sum was to be deducted from the balance alleged by the plaintiff to be due to him; that nothing was due to the plaintiff, but on the contrary a surplus was owing to the defendant; and that had Zomorud Ally Khan been defendant's security, he would have sealed and signed the security bond.

The plaintiff, in his replication, states that the security bond was signed and sealed by Zomorud Ally Khan as security for the defendant.

The principal sudder ameen considered the plaintiff's claim satisfactorily established, and gave a decree in his favor, declaring the property pledged in the security bond as liable for the satisfaction of the decree, and exempting Ameerunnissa Begum, as having no connection with the case, from all liability.

The defendant appeals from this decision, the grounds of his appeal being nearly the same as those urged in his answer before the lower court.

The chief documents in the case is the purwanah issued by the plaintiff as zemindar upon the defendant as ijardar, dated 26th Srabun 1245 B. S., in which he allowed him a remission from the annual jumma of rupees 214, 6 annas, 4 pie. The plaintiff states that this remission was to commence only from the date of the purwanah. The defendant claims remission during the whole period of the farming lease. Their accounts therefore differ according to their respective claims. The principal sudder ameen considers the purwanah as conveying a grant of remission according to the plaintiff's interpretation, but I differ with him on the following grounds.

There is no statement in the purwanah to the effect that the remission shall commence from the date of it. The farmer, on entering upon his lease, finds the jumma too high, and petitions for a deduction of rent. The zemindar accedes to his request. The grant of remission is given "*during the farming lease*," without specifying when it was to commence. It appears that for the first year the farmer only paid rupees 1,840, 13 annas, 11 pie, leaving a balance, according to the dowl kistbundee, of rupees 497-4-2, which would be nearly the amount of remission with interest. Had it not been the zemindar's intention to grant the remission for that year, he would have brought a suit against the farmer for the balance after its expiration. He omitted to do this. When the farming lease had expired, he first made a claim for this amount. Upon the other objections raised by the defendant (appellant,) I agree with the principal sudder ameen. The appeal is therefore dismissed, and I modify the principal sudder ameen's decree, deducting from it rupees 238-7-10 with reference to the above remarks, the remission being calculated from the commencement of the farming lease, instead of from the date of the purwanah, which will leave a total amount of rupees 1,095-8-2. The respondent will pay his own costs.

THE 20TH FEBRUARY 1850.

No. 2 of 1850.

Regular Appeal from the decision of Baboo Dwarkanath Roy, first grade Moonsiff of Lalbaugh.

Moonshee Nadalie, (Defendant,) Appellant,

versus

Gowreeprosad Shaha, (Plaintiff,) Respondent.

CLAIM for the recovery of arrears of rent due from 1252 B. S. to 1255 B. S., at the rate of annual jumma rupees 30, 9 annas, 8 pie, being 122-6-6, and interest Company's rupees 22-12-6, total Company's rupees 145-3, instituted 12th June 1849, and decided 10th December 1849.

The defendant did not appear to defend the suit, notwithstanding the usual processes of the court were served and issued.

The moonsiff considered the claim of the plaintiff established, and gave an *ex parte* decree in his favor.

The defendant, in his appeal, urges chiefly that he was prevented by sickness from appearing in court and defending the suit, and that he had preferred a special appeal to the Sudder Court from a former decision regarding the said jumma, and did not therefore take steps to make a defence in this case.

I see no ground for disturbing the moonsiff's decision. The appellant gives two reasons for not defending the suit. The one upsets the other. If he awaited the result of a special appeal, the plea of illness falls to the ground, for had he been well he would not, from his own shewing, have defended the suit. The appeal is dismissed, with costs, and the moonsiff's decision confirmed.

THE 20TH FEBRUARY 1850.

No. 134 of 1849.

Regular Appeal from the decision of Baboo Gooroopershad Bose, Moonsiff of Kandhee.

Sheikh Mohumed Syem, (Plaintiff,) Appellant,

versus

Dosseemonee Dosseah, Rookmonee Dosseah, deceased, grandmother of Kistolal, minor, and Radamohun Singh, guardian on the part of the minor, (Defendants,) Respondents.

CLAIM for the recovery of the amount of Company's rupees, both principal and interest, 299-2-10, under an instalment bond executed on the 6th Bysack 1247 B. S., instituted on the 4th May 1849, and decided on the 29th October 1849.

From the plaint it appears that an ancestor of the defendants, Doorgapershad Doss, during his life-time borrowed from the plaintiff a sum of money in the month of Falgoon 1241 B. S., and gave an order for the liquidation of the debt to his ijardar of the villages of Sreepore and Luckipore in kismut Boodoah, his own zemindaree; that the ijardar made payments at the same time with the payment of rent due from him from 1242 to 1246 B. S., and gave up the farm; that on the death of Doorgapershad the defendants, on adjusting their accounts, found a balance against them of Company's rupees 552, and, being unable to pay the amount, they executed the instalment bond alluded to, in which they bound themselves to pay each instalment as stipulated, or on failure to liquidate the whole amount at once with interest; that, after paying 412 rupees 6 annas at different periods, a balance of 139-12 stood against the defendants; that one of them, Rookmonee, died, leaving Dosseemonee, and Kistolal, minor, the grandson of Rookmonee, in possession of all the property; that the plaintiff brought this action against the defendants for the recovery of the whole amount, including principal and inter-

est, of rupees 299-2-10, together with interest accruable thereon to the date of realization.

The defendant, Dosseemonee, after the expiry of the usual period allowed in the process of the court, appeared through her vakeel, and, in her answer, pleaded payment of the debt, and denied the execution of the instalment bond, and stated that the plaintiff had forced Radamohun Singh to execute the deed, and brought a false action against them with a view to deprive them of a small zemindaree in their possession, and being an influential man Radamohun Singh was afraid to complain against him in the foudaree court regarding the compulsory execution of the deed.

The moonsiff did not consider the evidence sufficient to establish the plaintiff's claim, and dismissed it, with costs.

The plaintiff appealed from this decision, urging chiefly, in his appeal, that the execution of the deed was satisfactorily proved by the evidence of his witnesses, and that, had the objection of the defendants regarding the forcible execution of the deed been true, Radamohun Singh would not have failed to complain against him in the criminal court; that as Kistolal, minor, was his son and heir, the liability of the father attached to the son; and that Radamohun, in order to protect his son's property, adjusted the accounts and executed the deed.

This case depends entirely on the genuineness or otherwise of the instalment bond for rupees 552, executed on the 6th Bysack 1247 B. S., by the defendants. The grounds stated by the moonsiff for the rejection of the document are not sufficient. Had it been, as alleged by one of the defendants, Dosseemonee Dosseah, a compulsory bond, the defendant Radamohun Singh would, within so long a period between its execution and the institution of the suit, have complained against the plaintiff, and taken measures to free himself from its liability. He did not do so, and he has not appeared in this case. If the moonsiff doubted the genuineness of the bond, he should, to satisfy his doubts, have taken the evidence of all the witnesses to its execution. Out of eleven witnesses he took the deposition of only four. His investigation, therefore, on this point, was not complete.

The appeal is admitted, and the case remanded to the moonsiff for re-trial.

The value of the stamp in appeal to be returned to the appellant.

THE 21ST FEBRUARY 1850.

No. 5 of 1850.

Regular Appeal from the decision of Baboo Gooroopersaud Bose, Moonsiff of Kandee.

Ramsumbhoo Mitter and Ramdhun Mitter, (Defendants,) Appellants,

versus

Bhoobunnesuree Debbeah, guardian on the part of Mohender Narain and Sanda Pershaud Roy Chowdhrees, minors, (Plaintiff,) Respondent.

CLAIM for the recovery of arrears of rent, principal Company's rupees 96-9-12, interest Company's rupees 51-2, total Company's rupees 147-11-12, instituted 25th May 1849, and decided 24th December 1849.

The plaintiff states that the defendants failed to pay to him the amount of rent due, which he claims, on account of a shikmee jumma named jote Ramsurn, from 1249 to 1255 B. S., and that he therefore sued against them for the recovery of it, with interest.

The defendants, in their answers, denied the fact of the guardianship of Bhoobunnesuree Debbeah, as the mother of the minors, by name Mookt Kashee, was alive, and pleaded payment of the whole amount claimed to Shamachurn Roy, gomashtah on the part of the said Mookt Kashee Debbeah, for which they held receipts.

The moonsiff, considering the evidence on the part of the plaintiff sufficient, and as the defendants could not produce the receipts for payments alleged by them to have been made, though time was allowed for the purpose, modified the claim on account of interest erroneously calculated, and gave a decree in favor of the plaintiff for Company's rupees 159-14, with interest and costs against the defendants.

The grounds of the appeal are the same as those stated in the defendants' answers before the moonsiff, with the exception of the objection, that the moonsiff did not take the documents they wished to file, and decreed the case unjustly against them.

The appellant can shew no reason why, within the period allowed by the moonsiff, viz. 4 months, he did not produce dakhilas to prove that he had satisfied the claim against him. As he admitted the debt had been due, and could not prove it had been satisfied, and as he does not dispute the relationship of Bhoobunnesuree Debbeah and Mookt Kashee to the minors, to whom the debt was due, although he objects to the defendant styling herself their guardian, and as it appears that this guardianship was one of a private arrangement, and that Mookt Kashee, the mother, resigned it, on account of age, to her daughter, Bhoobunnesuree, I see no grounds for disturbing the moonsiff's decision, which I therefore confirm, dismissing the appeal, with costs.

THE 22ND FEBRUARY 1850.

No. 24 of 1844.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Roy Bahadoor, first grade Principal Sudder Ameen of Moorsbedabad.

Bunkbeharee Singh, (Defendant,) Appellant,

versus

Gopal Chund Chowdry, (Plaintiff,) Respondent.

SUIT for the recovery of Company's rupees 1,597-1-3, being surplus amount of revenue paid by the plaintiff into the collectorate on account of the defendant, instituted 28th June 1841, and decided 23rd August 1844.

It appears from the plaint that, on the 10th Assin 1245 B. S., the plaintiff purchased a moiety of turuf Mitterpoora and Degulnuggur, in pergunnah Nowalnuggur, for Sicca rupees 9,750 from Doorgapershad Mitter; that the sudder jumma was Company's rupees 1,818-14, as registered in the name of Doorgapershad Mitter, in the Moorsbedabad collectorate; that he held in his possession a registered deed of sale, and that his name was entered in the register of the collectorate instead of Doorgapershad; that he obtained possession of the said moiety, when Doorgapershad, with the view of causing the public sale of the whole zemindaree, wilfully neglected to pay the Government revenue, and that the plaintiff to save the estate from sale paid off the arrears of revenue due to Government, viz., from the 28th Poos 1245 to 3rd Joist 1248 B. S., amounting to Company's rupees 3,903-13; that he held in his possession twenty-eight dakhilas or receipts for the same; that out of the said amount of Government revenue paid in by the plaintiff, Company's rupees 2,500-15-13 had become due to Government from the plaintiffs for his share of the property from the date of his purchase to the month of Joist 1248 B. S.; that Company's rupees 140-2-13-9 had become due from Doorgapershad on account of the other moiety he had in his possession; that the plaintiff had paid in the said surplus amount of revenue to Government on account of Doorgapershad; that Doorgapershad having in consequence become liable to the plaintiffs for the said amount, had contrived to disappoint him; that out of the other moiety in his possession he transferred 4 annas share to one Achumbeet Singh and the other 4 annas to his brother-in-law Hurreechurn Singh, and failed to pay what was due to the plaintiff; and that he (the plaintiff) therefore sued against Doorgapershad Mitter, Achumbeet Singh, and Hurreechurn, defendants, for the recovery of the principal, Company's rupees 1,402-13-9, and interest, Company's rupees 194-3-6, from the moiety of the property in Doorgapershad's possession.

Achumbeet Singh, defendant, in his answer, denied the claim, and stated that he purchased 4 annas share of the turuf in question for Company's rupees 1,800 from Doorgapershad Mitter and Degul-

buree Dosseah, on the 13th Bhadur 1244 B. S., under a kut-kubalah, or deed of conditional sale; that he brought an action, No. 139 of 1840, for possession of the same, and obtained a decree in his favor; and that, having obtained possession of the said share in the month of Joist 1248 B. S., he paid off the revenue due on his share up to Bhadur; that the plaintiff sued for the recovery of the money paid in by him on account of arrears of revenue due from 1245 B. S. to 1248 B. S.; that Doorgapershad had been in possession of the mehals during that period, and was accountable for the arrears due, if they had not been paid; and that neither the defendant nor his share of the property were liable.

The defendant, Hureechurn Singh, in his answer, pleaded that Doorgapershad Mitter sold 4 annas share of the turuf in question to the defendant's nephew, Bunkbeharee Singh, son of Kisto Chunder Singh, at Sicca rupees 4,875 on the 11th Assin 1245 B. S.; that Bunkbeharee being a minor, the deed of sale was executed in the name of the defendant Hureechurn Singh; that Bunkbeharee had possession from the date of its purchase; that one Beejoy Kisto, having obtained a decree against Doorgapershad, had caused an attachment to be laid upon 4 annas share of the property; but a claim having been preferred and substantiated by Bunkbeharee, it was released from attachment; that the omission of the plaintiff to include Bunkbeharee as defendant in his plaint, and his institution of one suit for two demands, were sufficient grounds for throwing out the suit; that Bunkbeharee had paid all the revenue due for the period alluded to, and held dakhilas for the same.

The plaintiff, in his replication, added that the defendant Degumburee Dosseah had no right to the property; that the purchase of it from her was collusive; that Doorgapershad had all along been in possession without a co-partner; that the surplus amount paid in by the plaintiff on account of revenue ought to be recovered from the property Doorgapershad had in his possession; Doorgapershad Mitter had alienated the other 4 annas share fictitiously to Hureechurn; that Bunkbeharee Singh never had possession, and that Doorgapershad's wife, Degumburee Dosseah, has been in possession since his death.

The plaintiff, in his supplementary plaint, applied for permission to include Bunkbeharee Singh as defendant. Bunkbeharee defendant did not appear to defend the suit, although the usual processes of the court were served and issued.

The principal sudder ameen, considering the evidence adduced by the plaintiff, especially with reference to the chullans and dakhilas filed by him; sufficient to establish his claim, gave a decree in his favor, for principal and interest Company's rupees 1,377-3-9, modifying the claim thus. The sudder jumama of the whole estate being Company's rupees 1,818-14, and that of the moiety Company's rupees 909-7; respectively, the balance against the plaintiff for his

own share of the property from the 10th Assar 1245 to the 3rd Joist 1248 B. S. was Company's rupees 2,500-15-3; that the plaintiff having paid into the collectorate Company's rupees 3,723 from the 28th Poos 1245 B. S. to 3rd Joist 1248 B. S., his payment of the surplus amount of Company's rupees 1,222-0-9, in order to save the estate from the public sale, is self-evident, and interest accruable thereon is due to the plaintiff; that since Achumbeet Singh defendant had not the 4 annas share of the property in his possession, during the period between the 28th Poos 1245 and 3rd Joist 1248 B. S., and Doorgapershad held possession of the same prior to the possession by Achumbeet, defendant, under orders of the civil court, the share therefore of Doorgapershad for the time must be liable to the decree; that Bunkbeharee is liable for the rest or half of the amount decreed, as by the petition presented before he was included as defendant it was clearly proved that he had been in possession of the 4 annas share from the 11th Assin 1245 to 1248 B. S.; and that the other defendants are exempted from liability, excepting that Deegumburee Dosseah and Doorgapershad's mother are liable for any part of the property of Doorgapershad which they may have in their possession.

The defendant, Bunkbeharee, appeals from this decision, urging chiefly, in his appeal, that in consequence of ill health and ignorance of the service of the processes of the court, he was unable to defend the suit; that he held dakhilas from the collector's office for the period in question; and that, had the principal sudder ameen called for these proofs from the collectorate, he would not have been accounted liable to the decree.

There is no dispute in this case regarding the purchase on the part of the plaintiff of the moiety of turuf Mitterpoor and Degulnuggur, in pergunnah Nameahnuggur. The question to be considered is whether he paid revenue into the collectorate to save the estate from sale, and is entitled to a decree for the amount he paid.

Before the principal sudder ameen, he has only entered copies of chullans as proofs of payment, with the exception of one dakhila for the sum of 67 rupees, which only shews that this amount was paid for the estate, but not on whose account. The principal sudder ameen considered these chullans as sufficient evidence of payment, and decrees for the plaintiff. They are not, in my opinion, evidence of actual payment. They do not appear to have been signed either by the collector or the treasurer, and even if they had been signed they would not prove that the money had been paid, unless corresponding dakhilas signed by the treasurer and collector were produced to substantiate the payment. The appellant can shew no good ground of objection against the *ex parte* decision. There was nothing irregular on this point. He had sufficient time allowed him to file an answer. But as the investigation of the case on the part of the principal sudder ameen appears to have been incomplete, and as

there is a probability that the other objection of the appellant, that he possesses and can produce collectorate dakhilas as evidence of payment of revenue for the estate may be proved, since the respondent did not produce them, I admit the appeal, and remand the case to the principal sudder ameen for re-trial. The value of the stamp in appeal to be returned to the appellant.

THE 25TH FEBRUARY 1850.

No. 4 of 1850.

*Regular Appeal from the decision of Baboo Tarra Kishen Haldar,
Moonsiff of Jungypore.*

Shahadut Mundul, (Defendant,) Appellant,

versus

Anardee Mundul, (Plaintiff,) Respondent.

CLAIM for the recovery of a bond debt, principal amount rupees 49, interest Company's rupees 9-8-9, total Company's rupees 58-8-9, instituted 12th July 1849, and decided 12th December 1849.

The plaint sets forth that the defendant borrowed the above sum of money from the plaintiff, and executed a bond on the 15th Aughun 1254 B. S. for the amount, but, failing to liquidate the debt according to promise, the plaintiff sued against him for the recovery of the amount with interest to the date of realization.

The defendant admits the execution of the bond, but pleads payment on different occasions, as specified at the back of the bond. He states also that he received only 28 rupees out of the 49, and that because he had objected to pay more than legal interest the plaintiff had changed the original bond, and executed another in order to bring this action against him.

The plaintiff, in reply, states that the defendant tried to compromise the case after its institution.

The moonsiff considered the plaintiff's claim established with the exception of 10 rupees, for the satisfaction of which amount, it appeared from one of his own witnesses, the defendant had given him 15 maunds of gram. He therefore gave a decree in favor of the plaintiff for 39 rupees with interest.

The defendant appealed to this court, chiefly on the ground that he was prevented by sickness from putting in evidence in defence of the suit.

I see no good grounds for the admission of the appeal. There is no evidence to shew that the bond produced was not the original one, and that another was substituted in its place.

The defendant was allowed sufficient time to defend his suit, but took no measures for the purpose. I therefore confirm the moonsiff's decree, dismissing the appeal, with costs.

ZILLAH NUDDEA.

PRESENT: J. C. BROWN, Esq., JUDGE.

THE 15TH FEBRUARY 1850.

No. 84 of 1849.

Regular Appeal from a decision passed by Syud Suadut Hoosain, Moonsiff of Dowlutgunge, on the 9th August 1849.

Coos Chunder Rukhit and others, (Plaintiffs,) Appellants,

versus

Sumbhoo Chunder Singh and others, (Defendants,) Respondents.

THIS case was returned by me to the above named moonsiff on the 12th May 1849, under the provisions of Section 2, Regulation IX. of 1831, for further investigation; that which he had made being unsatisfactory.

It appears that with reference to the orders he had received he proceeded in person, and called on the parties to name any credible disinterested persons who might be cognizant of the rights of the case, and whose evidence they would abide by.

They named seven persons, of whom six gave evasive answers to the queries put to them, and the seventh, named Uddit Chunder Dutt, clearly stated the land in dispute belonged to Dowlutgunge and was the property of the defendants (respondents.)

The plaintiff and appellant in this case is a ryot, who, instead of the proprietor, has all along been prosecuting for possession of the 2 cottahs in dispute. I do not look on this case as one for possession, but to determine whether the land is in Dowlutgunge or Jeebunnuggur, and the proprietor of the land should have sued if he chose. His not doing so can only be construed into his consciousness of his inability to prove his right to the contested land.

I so far agree with the moonsiff in his decision as relates to *the plaintiff not having proved his right of occupancy of the land as belonging to Jeebunnuggur*, but I do not think it is clear that it belongs to Dowlutgunge. That can only be proved by a suit for the proprietary right.

Under the above circumstances there is no occasion, as provided for in Clause 3, Section 16, Regulation V. of 1831, to summon the respondent.

ORDERED,

That the appeal is dismissed with costs, and the moonsiff's decree is confirmed, of which notice is to be given to him as enacted in the Regulation or Section above alluded to.

THE 16TH FEBRUARY 1850.
No. 101 of 1849.

Regular Appeal from a decision passed by Baboo Ram Cumul Rae Chowdhuree, Officiating Moonsiff stationed at Mehurpore, on the 24th October 1849.

Mr. James Hills, (Plaintiff,) Appellant,

versus

Neel Comul Biswas, (Defendant,) Respondent.

THE plaintiff brought this suit to recover 20 rupees, 11 annas, 17 gundahs, and 2 cowrees, balance of rent for 1 beegah and 8 cottahs of land on which the defendant's house was built, for the years 1250 to 1253, both years inclusive, under the following circumstances:

The plaintiff took the putnee of Mehurpore (in which the land, which is the subject of this action, is situated) in 1249, and commenced measuring and ascertaining all particulars regarding the land. The measuring was completed in 1250 B. S., but under one excuse or another the defendant would not execute any kubooleut for paying the rent. These excuses and even disputes regarding the liability of the lands went on till the 11th of Bysakh 1254, on which day the defendant executed a kubooleut to pay rent from the commencement of 1250 to the close of 1258, or for a period of nine years. The plaintiff states that during 1250 to end of 1253, the defendant paid at times 6 rupees 8 annas, and the suit is brought for the balance with the interest, which had accrued.

The defendant denied having executed the kubooleut, or having paid any money, and declares that the land the plaintiff wants to claim rent for is his lakhiraj.

The plaintiff to substantiate his claim, has filed a kubooleut and produced his witnesses.

The moonsiff has, for the reasons detailed in his decision, rejected the kubooleut and the evidence of the witnesses; and the plaintiff, in preferring his appeal, has not given good and sufficient reasons for its admission.

I am of opinion that the plaintiff (now appellant) cannot claim rent on a kubooleut executed subsequently to the period for which the rent is claimed, or, in other words, a deed of this description cannot have a retrospective effect. I am also of opinion that the evidence of the witnesses, from the fact of the connexion which exists between them, namely, that of employer and employees, is not to be received without the greatest caution, and in this case the discrepancies in the evidence renders it unsatisfactory.

Under these circumstances, I agree with the moonsiff in the view he has taken of the plaintiff's claim, and not seeing any good grounds for interfering with his decision, there is no occasion, as provided for in Clause 3, Section 16, Regulation V. of 1831, to summon the respondent.

IT IS ACCORDINGLY ORDERED,

That the appeal is dismissed with full costs, and the moonsiff's decree is confirmed, of which intimation is to be given him as provided in the enactment above quoted.

THE 23RD FEBRUARY 1850.

No. 107 of 1849.

Regular Appeal from a decision passed by Baboo Ram Cumul Rae Chowdhuree, Moonsiff stationed at Mehurpore, on the 12th November 1849.

Mr. James Hills, (Defendant,) Appellant,

versus

Neel Comul Biswas, (Plaintiff,) Respondent.

THIS suit was brought by the plaintiff to dispute the defendant's distraint of his property for rent. The defendant alleged that the plaintiff had two portions of land in occupancy, one on a building lease, and the other for cultivation. His claim to rent for the first mentioned portion was set aside in the case disposed of on the 16th instant, case No. 101 of 1849, in which the moonsiff's decree was confirmed, so that it only remains to decide upon the appellant's claim to rent for the cultivated land.

The moonsiff has rejected the kubooleut filed by the appellant, on the grounds that the two witnesses have deposed that the respondent wrote the kubooleut, but on comparing the writing with other papers in the record, which are known to have been written by him, the caligraphy does not correspond; secondly, that the said witnesses are in the appellant's employ, and are not worthy of credit.

I do not consider the similarity or non-resemblance of a Bengallee's handwriting is of any weight, as it is well known that they can easily write in different styles, when it may suit their purpose. With regard to the witnesses, I am of opinion that, as they are dependants of the appellant, their evidence must be received with great caution, and I do not think their evidence in this case is satisfactory, unsupported as it is by any other.

The appellant has not, in his appeal, shown sufficient cause for being dissatisfied with the decree, which I consider perfectly legal and just. There is therefore no occasion under the provisions of Clause 3, Section 16, Regulation V. of 1831 to summon the respondent.

IT IS ORDERED,

That the appeal is dismissed, and the moonsiff's decree confirmed, and this result is to be intimated to the moonsiff as provided for in the enactment quoted.

THE 23RD FEBRUARY 1850.

No. 108 of 1849.

Regular Appeal from a decision passed by Baboo Ram Cumul Rae Chowdhuree, Moonsiff stationed at Mehurpore, on the 12th November 1849.

Mr. James Hills, (Defendant,) Appellant,

versus

Chundur Dhobee, (Plaintiff,) Respondent.

THE appellant in this case distrained the respondent's property for 2 rupees, according to the jumma-wasil-bakee, and 1 rupee, 14 annas, 15 gundahs due, as he alleged, on a kubooleut. The respondent instituted this suit to dispute the claim.

The appellant exhibited no proof in support of the first part of his claim, though called on repeatedly to do so, and with regard to the remainder the moonsiff deputed the nazir of his court to the spot to make local investigations regarding it.

Neither appellant nor any persons on his part pointed out the land which he sued for the rent of, and the moonsiff accordingly dismissed the suit.

The appellant, in his grounds for appealing, has stated that the jumma-wasil-bakee papers were not called for by the moonsiff, and that his naib was ill when the nazir was deputed to make the local investigation: he therefore prays that the proofs he now offers may be accepted. I am not of opinion that he is entitled to the indulgence, for the suit had been pending upwards of a year when the moonsiff called upon him to file his proofs, and the case was not disposed of for five months after, during which period he had ample time for proving his claim.

Considering that the moonsiff allowed the appellant ample time for filing his proofs, and that his decree is legal and just, there is no occasion under Clause 3, Section 16, Regulation V. of 1831 to summon the respondent. ●

ORDERED,

That the appeal is dismissed, and the moonsiff's decree is confirmed, notice of which is to be given him as provided under the law quoted.

THE 23RD FEBRUARY 1850.

No. 109 of 1849.

Regular Appeal from a decision passed by Baboo Ram Cumul Rae Chowdhuree, Moonsiff stationed at Mehurpore, on the 7th November 1849.

Mr. James Hills, (Defendant,) Appellant,

versus

Chundur Gundar, (Plaintiff,) Respondent.

THIS suit was brought by the plaintiff (respondent) to dispute the distraint of his property for rent, which the defendant (appellant) alleged to be due, on an ootbundee (*i. e.*, according to the land cultivated and produce) kubooleut. The points to be proved were if the plaintiff cultivated any and what quantity of land, and the moonsiff to ascertain these points, went in person to make the local investigation. The defendant's agent or karpardaz pointed out the land for which the rent was claimed; and the moonsiff made enquiries of the cultivators of the neighbouring fields, three of whom said the plaintiff did not cultivate them and one said he did. The plaintiff's occupancy not being proved, the moonsiff very properly decreed in favor of the plaintiff.

The defendant has appealed and has given as one of his grounds for so doing, that the moonsiff made investigations regarding the respondent's occupancy in 1256 B. *Æ.*, but his claim for rent was for 1254. This objection to the decree is met at once, for by referring to the depositions of the persons whom the moonsiff questioned, it is clear that he interrogated them regarding the occupancy in 1254.

Considering the moonsiff's decree legal and just, and no good reason having been shown to the contrary, there is no occasion under Clause 3, Section 16, Regulation V. of 1831 to summon the respondent.

ORDERED,

That the appeal is dismissed, and the moonsiff's decree confirmed, notice of which is to be given him as enacted.

THE 23RD FEBRUARY 1850.

No. 110 of 1849.

Regular Appeal from a decision passed by Baboo Ram Cumul Rae Chowdhuree, Moonsiff stationed at Mehurpore, on the 10th November 1849.

Mr. James Hills, (Defendant,) Appellant,

versus

Hurree Dhobee, (Plaintiff,) Respondent.

THE present respondent sued in the moonsiff's court, to set aside the distress of his property which the defendant (appellant) had caused to be seized for the sum of 2 rupees, 15 annas, 15 gundahs, alleging that the plaintiff owed him according to the jumma-wasil-

bakee 2 rupees, and according to a kubooleut 15 annas and 15 gundahs.

The plaintiff (respondent) denied the justness of the demand, and the defendant (appellant) was called upon to exhibit his proofs.

He exhibited no proofs of the balance due on the jumma-wasil-bakee, and in support of the kubooleut he subpoenaed two witnesses who proved it.

In the appellant's petition of appeal, he has stated that his naib was ill, and that was the reason his proof was not filed.

The moonsiff called for the proofs of both parties on the 7th June 1849, and waited for them till the 10th November following, when he was obliged to dispose of the case without any more delay.

The present appeal is only for the 2 rupees disallowed on the original claim.

I am of opinion that the appellant's appeal, which is solely on the ground of his jumma-wasil-bakee not having been proved, is inadmissible, because he had abundance of time allowed him by the moonsiff to exhibit his proofs, which he did not avail himself of, also it has been proved by the evidence of two witnesses, Ramlall Dhoba and Bindabun Barrick that the land for which the putneedar (the appellant) wants to exact rent is lakhiraj.

I consider the moonsiff's decree to be perfectly just, and, seeing no reason to alter it, I dismiss the appeal, and confirm the decree. Notice of this order is to be communicated to the moonsiff of Mehurpore.

THE 23RD FEBRUARY 1850.

No. 111 of 1849.

Regular Appeal from a decision passed by Baboo Ram Cumul Rae Chowdhuree, Moonsiff stationed at Mehurpore, on the 6th November 1849.

Mr. James Hills, (Defendant,) Appellant,

versus

Jugbundhoo Chatterjee, (Plaintiff,) Respondent.

THE appellant distrained the respondent's property for the sum of 106 rupees, 12 annas, and 13 gundahs, alleging that sum was due to him by the jumma-wasil-bakee, as rent for the year 1254 B. \mathcal{A} .

The respondent, not admitting the claim, brought this action to resist the demand, on the ground that the land for which putneedar (appellant) claims rent, is in fact held lakhiraj by him.

The appellant denies the respondent's plea of lakhiraj, and says if it were good, how was it that he (the putneedar) obtained a summary decree from the collector for the rent of 1250? The moonsiff, on the 7th of June 1849, and on several dates subsequent thereto, called on the defendant's (appellant's) vakeel to exhibit his client's proofs, but in vain, and, at length, on the 6th of November, he decided the suit on its merits.

The appellant objects to the suit having been disposed of without his proofs having been received and considered, and urges that his naib was ill and could not in consequence attend to conduct the case. This appears to be only an excuse, for, from the time the moonsiff first called for the proofs, five months elapsed before the case was decided, and if the naib was ill it was incumbent on the defendant (appellant) to have attended to the moonsiff's requisitions himself, or to have appointed a qualified agent to do so on his part. The moonsiff, according to the proofs exhibited by the plaintiff (respondent) decided the case in his favor, and I see no grounds to alter his decision, I accordingly, under the provisions of Clause 3, Section 16, Regulation V. of 1831, dismiss the appeal, and confirm the moonsiff's decree, and direct that intimation of this confirmation be communicated to the moonsiff.

THE 23RD FEBRUARY 1850.

No. 112 of 1849.

Regular Appeal from a decision passed by Baboo Ram Cumul Rae Chowdhuree, Moonsiff stationed at Mehurpore, on the 10th November 1849.

Mr. James Hills, (Plaintiff,) Appellant,

versus

Cheytn Churn Roy, (Defendant,) Respondent.

THE plaintiff claims rent from the defendant, for 7 beegahs and 4 cottahs of land, under a kubooleut dated 1st Bysack 1252, which, with interest for three years, and after deducting sums realized from defendant, amounted to 33 rupees, 3 annas, 9 gundahs, 2 cowrees.

The defendant denied the plaintiff's demand *in toto*, and has proved by the documents he has filed, and by the witnesses he has called, that 18½ cottahs of the land, the plaintiff has sued for, he holds in virtue of a pottah granted him by a lakhirajedar named Collee Sehai Chutterjeah.

The witnesses summoned by the plaintiff to prove a kubooleut, dated the 1st of Bysack, were unworthy of credit, because the moonsiff went in person and made local enquiries regarding the occupancy of the lands, which are included in the kubooleut, and it was clearly proved by disinterested parties, that the defendant dwelt on lakheraj land, and that he had not the other land in possession.

I consider the reasons given by the moonsiff for dismissing the plaintiff's claim satisfactory, while those given by the appellant for appealing are not.

Finding no good or sufficient reason given for altering or interfering with the moonsiff's decree, there is no occasion for summoning the respondent.

IT IS THEREFORE ORDERED,

That the appeal is dismissed, and the moonsiff's decision is confirmed, intimation of which is to be given him as provided for in Clause 3, Section 16, Regulation V. of 1831.

THE 25TH FEBRUARY 1860.

No. 53 of 1846.

Regular Appeal from a decision passed by Baboo Ramlochan Ghose Rar Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 18th of February 1846.

Chundur Coomar Pal Chowdhuree and others, (Plaintiffs),
Appellants,

versus

Ishur Chundur Pal Chowdhree, (Defendant,) Respondent.

THE plaintiff instituted this suit to recover 37 beegahs 10 biswas of land, which he affirms he has been dispossessed of by an order, passed by the magistrate under the provisions of Act IV. of 1840, on the 16th of February 1843, and Company's rupees 1,733, 6 annas, the value of indigo, taken away in 1247, 1248, and 1249 B. E.

It appears from the record of the proceedings, that the parties disagreed about the line of demarkation between their respective estates, and the plaintiffs' predecessor applied to the magistrate, under the provisions of the Act above mentioned, for assistance.

The magistrate referred the parties to an arbitrator, who recorded that the plaintiffs were entitled to 333 beegahs and 2½ biswas, which they were in possession of according to their admission. This award the magistrate carried out, and subsequently proceeded himself to the spot and marked the boundary by pillars of masonry. The plaintiffs now claim 37 beegahs and 10 biswas, on account of loss in measurement; as they state that the measurement should have been with a rope measuring 55 yards of 29 inches, whereas it was made with one measuring 80 cubits of 18 inches.

The principal sudder ameen has recorded "that it is necessary to decide upon the following points in this suit:—First, whether the plaintiffs were up to 1247 in possession of the land named Chuttee Matut, the defined boundaries of which as being the land in dispute were called for by him in his proceeding, dated the 6th of November 1845. Second, if the 37 beegahs and 10 biswas now claimed by the plaintiff are situated to the north east of the head of Sonta Boona Garree, as awarded by the arbitrator or not.

"With regard to the first point, the plaintiffs on the 14th of Jeth 1247, stated to the arbitrator that the 333 beegahs, 2½ biswas in Chuttee Matut, were by the orders of the court in the possession of Nubbeen Kishwur Singh, proprietor of Bausbarriah indigo factory, and it is clear from the magistrate's proceedings, of the 21st April

and 14th of December 1849; that the whole of the *Offuttas Mant* and the *muhul* of *Namdar Khan* have heretofore been in the possession of *Nubbeen Kishwur Singh*. Under these circumstances, it is clear the plaintiffs were not in possession of the lands they claim in the years 1246 and 1247, and as they could not therefore have cultivated indigo on them in 1247, there is no foundation for their asserting that the defendants took the crops.

Secondly.—It is clear from the map taken of the land by the *serishtadar*, and which neither party has disputed, that the lands in dispute are situated to the south and west of *Sonta Boona Garree*, and the claim of the plaintiff is in consequence, according to the arbitrator's award, and the magistrate's proceeding, inadmissible.

Thirdly.—The witnesses, who have given evidence for the plaintiffs, are not, for the reasons stated, worthy of credit."

From the above, it is clear, that the principal *sudder ameen* has not decided the points or grounds on which the plaintiff brought his suit. The plaintiff sued for the deficiency, in the quantity of land he was entitled to, under the arbitrator's award, and which deficiency he states was caused by the *ameen*, that was deputed by the magistrate, having measured with an 80 cubit rope, instead of a 55 yard one. The principal *sudder ameen*, when he deputed his *serishtadar* to make local enquiries, directed him to ascertain the measure which the plaintiff was entitled to, and which standard had been used by the *ameen*, and though the *serishtadar* did make every enquiry he was directed, the principal *sudder ameen* has not decided whether the plaintiff's claim of having his land measured to him with a 55 yard rope was just or not.

He has entered in his decree that it is clear the land claimed lies to the south and east of the *Boona Garree*, which divides the respective estates of the parties, but in the magistrate's English and the *serishtadar's* vernacular maps, there are no signs of that *Sonta* between Nos. 1 and 14.

It is only to be found between Nos. 14 and 29 where it falls into the *Tirpoorapoor Khal*, so that it is not enough for the principal *sudder ameen* to say that the parties admit the *Boona Garree* was the boundary. He has to decide, first, whether the plaintiff was entitled to have the 55 yards or the 80 cubit measure used in the demarkation of the land he was entitled to by the arbitrator's award; secondly, which of those was used; and thirdly, if the plaintiff has sustained any loss or not. If he has, he is entitled to a decree, including his loss of crop or cultivation. Considering the principal *sudder ameen* has decided the case without reference to the points at issue, under the provisions of Clause 2, Section 2, Regulation IX. of 1831, I return the case to him for revision.

ZILLAH PATNA.

PRESENT : R. J. LOUGHNAN, ESQ., JUDGE.

THE 15TH FEBRUARY 1850.

No. 2.

Original Suit.

Sob Narain Singh, Plaintiff,

versus

Rae Shunker Lall, Defendant.

SUIT laid at rupees 15, for the value of rice sold.

The defendant is the second principal sudder ameen of this city, and, on the institution of the suit in the moonsiff's court of the western division, from which court appeals are referred to the defendant, being observed, in view of the manifest impropriety of its being heard and determined in that court, it was removed into the court of the judge.

The defendant utterly denies the purchase of the rice, the subject of the claim, and pleads that the object of this unfounded claim, which has been instituted at the instigation of a third party, named Mohun Lall, a mokhtyar practising in the courts of this city, is intimidation, and the obtaining of some influence over the defendant in his capacity of principal sudder ameen. The plaintiff has filed a "baznamah," in which he admits his inability to bring forward proof in support of his claim without assigning any satisfactory reason for that inability. He has thus admitted the groundlessness of his suit. The plaintiff, moreover, after stating the claim, goes on to threaten the institution of proceedings against the father of the defendant for certain bonds executed by him in favor of plaintiff's father, thus shewing the *animus* of the plaintiff, viz., his desire to vex and harass the defendant with groundless suits or threats of the same.

This appears to me to be a case imperatively calling for the enforcement of the penalty prescribed by Section 12, Regulation III. of 1793. I therefore dismiss the suit as groundless and vexatious, and condemn the plaintiff to the payment of costs and a fine of rupees 200. If the defendant thinks he can prove the instigation of the institution of this suit against any mokhtyar practising in this court, he can move the court to investigate the case by miscellaneous petition. A purwanah will issue to the nazir of the court to realize the fine from the plaintiff.

THE 18TH FEBRUARY 1850.

No. 5 of 1849.

Appeal from a decision of Mr. E. DaCosta, first Principal Sudder Ameen, on the 29th December 1848.

Shah Shurf Alli, (Plaintiff,) Appellant,

versus

Shah Mahomed Hossein and Hurkmun Misser, (Defendants,) Respondents.

SUIT laid at rupees 200, to cancel a deed of sale.

This suit was originally tried by, remanded to, and again decided by a former sudder ameen, from whose decision a second appeal being admitted, the suit was again remanded and ordered to be tried in the court of the first principal sudder ameen. The grounds of the action are that the defendant, Hurkmun Misser, who executed the deed of sale of 28th January 1845 in favor of the other defendant, Shah Mahomed Hossein, having already sold the estate transferred by it to and put plaintiff in possession under a deed of prior date, the second deed was void and ought to be so declared. The reasons for the second remand were the sudder ameen's having decided upon a point of Mahomedan law, viz., whether a sale was complete and valid without an interchange of the things expressed in the deed, not having first taken an exposition of the law from the Mahomedan law officer, and having omitted to notice the fact of the deed of sale sought to be cancelled having been registered while the deed of prior date was not so, and to take evidence as to the authenticity of the registered deed. The further proceedings in the principal sudder ameen's court have established—first, the validity of the first sale according to the exposition of the law officer, the facts alleged by plaintiff being taken for granted, but secondly, the authenticity and registry of the deed ought to be set aside as invalid. The principal sudder ameen decides that the plaintiff has failed to establish his purchase, having neither produced the deed of sale, nor brought forward a single witness to its execution of those whose names were subscribed upon it. Moreover, that, as the authenticity of the registered deed was proved, plaintiff's unregistered deed was invalid under the 2nd Section of Act XIX. of 1843.

The appellant urges that his witnesses, although not those who subscribed the deed of sale executed in his favor, whom, being dependants and friends of the defendant, he was unable to bring into court, satisfactorily, proved the transfer by sale to him of, and his possession upon the property, and secondly, that the witnesses to the authenticity of the deed, which he sues to have cancelled, are not believed.

The first point to be decided in this case is the authenticity or want of authenticity of the registered deed. If its authenticity is

proved, it cannot be invalidated by a sale of prior date made under a deed which it invalidates unless the Act is to be a dead letter. I have read over the evidence of the witnesses to the deed, which proves its authenticity, and I see no reason to disbelieve their testimony.

The principal sudder ameen's decision therefore, by which the suit is dismissed, must be upheld as conformable to the law. The appeal is dismissed without notice to respondent to appear, and the decision confirmed.

THE 18TH FEBRUARY 1850.

No. 1.

Appeal from a decision of Mr. E. DaCosta, Principal Sudder Ameen, on the 20th January 1849.

Furhut Hossein and others, (Plaintiffs,) Appellants,

versus

Boolakee and others, (Defendants,) Respondents.

SUIT laid at rupees 600, to recover the value of the materials of a house removed by defendant, and to obtain possession of a house formerly in the occupancy of Moobarukoonnissa.

The defendant pleaded possession of the houses under a deed of sale with remission of the purchase money executed by the said Moobarukoonnissa, alleging that she adopted him as her son, and continued to reside in the dwelling with and borrowing it from him.

The principal sudder ameen, in his decision, says, the dispute hinges on the genuineness of the sale and its validity under the Mahomedan law. "The first point is proved (he writes) by the evidence of witnesses and the fact of defendant's undisturbed possession, while with regard to the latter point, the subsequent ~~fact~~ ^{deed} delivered by the law officer, after perusal and inspection of the deed of sale, is conclusive. He clearly pronounces the deed of sale to be a legal and valid document, *if its authenticity be proved*, and the property alienated be otherwise defined. As the house (he continues) is the only property in dispute, and its boundaries are clearly specified in the deed of sale, which has been satisfactorily proved by the evidence of the witnesses, I therefore dismiss the plaint, with all costs."

This decision, as pleaded by the appellant, is not conformable to the law officer's exposition of the law, which in fact the principal sudder ameen has misunderstood and misquoted. The law officer did not write, *if its authenticity be proved, but if immediate possession was given and taken*, on the execution of the deed. Respecting the property alienated, the expression of the law officer is, "if it was divided off and not undefined." It appears that by the deed of sale, which the law officer considers equivalent to a deed of gift, other property besides the dwelling is alienated, viz. a third share of

certain lands. It is of no consequence that the house, though within well defined boundaries, was the sole property in dispute, the validity of the deed must be tested according to the law, as expounded by the law officer, with reference to the fulfilment of the conditions of validity in respect to all the property transferred. The decision cannot therefore stand, and the suit must be remanded for re-trial with reference to the above remarks. The value of the stamp will be refunded to the appellant.

THE 19TH FEBRUARY 1850.

No. 9.

Appeal from a decision passed by Mr. E. DaCosta, Principal Sudder Ameen, on the 25th January 1849.

Bahadoor Alli Khan and Unwur Alli Khan, (Plaintiffs,) Appellants,
versus

Sheikh Deedar Alli, Sheikh Nasir Alli, and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 3,000, to obtain the surrender of a deed of sale, said to have been executed by Nujeeboonnissa, the sister of the plaintiffs, now deceased, in favor of the minor sons of the defendant Deedar Alli. In the decision, the grounds of the action are stated to be these: that the deed is collusive and forged, and that no purchase money having been paid but remitted, it is in reality a deed of gift, and, as the property was undivided, an invalid one, according to the Mahomedan law; therefore, that plaintiffs, having succeeded to the property of their deceased sister, are entitled to claim its surrender. The defendants are said to have maintained the genuineness and legality of the sale, the points upon which the decision, in the opinion of the principal sudder ameen, hinges, and he states his opinion that they have succeeded in satisfactorily establishing both, and consequently dismisses the suit.

The reasons on which his conclusion upon the point of the legality of the sale is founded, are not stated in such clear and precise terms as to obviate all liability of misapprehension, and I am in doubt whether I have understood them aright. However this may be, the decision is in other respects faulty, and the suit must be remanded for re-trial, on the following grounds. As stated in the appeal, the determination of the point of the legality of the sale is contradictory to the law as shewn in the exposition of the law officer of the court, which in fact the principal sudder ameen has overruled in view of an exposition of a contrary tenor, taken from the law officer of the Arrah court, which the principal sudder ameen thinks more conformable to the principles and precedents of law on this question to be found in the work of Macnaghten. I am not aware of any authority for thus overruling the exposition of the

law officer, although Section 2, Regulation II. of 1798 seems to warrant the requirement of an exposition of the law in certain circumstances from the law officer of a higher court. This, however, cannot be construed to give a power to the courts to set aside a futwa of their own law officers, in order to follow that of a law officer of another zillah. But further than this, it appears to me that the principal sudder ameen has not taken a correct view of the points to be determined in this case, which are these: was the deed purporting to be a deed of sale executed by Nujeeboonnissa, or not? If it was so executed, is it to be considered, with reference to the relinquishment of the purchase money, a deed of gift or a deed of sale? If a deed of gift, were the conditions required by the Mahomedan law to validity fulfilled? If the validity or authenticity of the deed are not established, are plaintiffs entitled as heirs to Nujeeboonnissa to demand the surrender of the deed to them? The plaintiffs clearly took up a ground of invalidity in the deed, which does not seem to have been specially noticed in the decision: they pleaded that, as a deed of gift, possession should have been immediately given to the donees to make it valid, and this was not given, for in fact the donor remained in possession of the property up to the time of her demise. The decision is, for the above reasons, reversed, and the suit remanded to be again tried with advertence to the abovementioned plea of the plaintiffs, and to the foregoing remarks. The value of the stamps will be refunded to the appellants.

This case seems to belong to the jurisdiction of the second principal sudder ameen: it will therefore be sent for trial to that court.

THE 19TH FEBRUARY 1850.

No. 8.

Appeal from a decision passed by Mr. E. DaCosta, from the Principal Sudder Ameen, on the 25th January 1849.

Buhadoor Alli Khan and Nuwur Alli Khan, (Plaintiffs),
Appellants,

versus

Sheikh Deedar Alli, Sheikh Nadir Alli, and others, (Defendants),
Respondents.

SUIT laid at Company's rupees 1,000, to obtain the surrender of a deed of sale said to have been executed by Nujeeboonnissa, now deceased, the sister of the plaintiffs, in favor of the minor daughter of defendant, Deedar Alli's brother. In this case the grounds of action and answer, the points in dispute, and the grounds of the decision were the same, with the exception of the difference of the party in whose name and favor the deed was said to have been executed, and the property said to have been alienated by it,

as in appeal No. 9, this day remanded for re-trial. The decision is therefore reversed, and the suit remanded for re-trial, on the same grounds as in that case. Value of stamps also to be refunded.

The decision of this case appertains to the jurisdiction of the second principal sudder ameen, and it will therefore be sent to his court for re-trial.

THE 20TH FEBRUARY 1850.

Appeal from a decision of the second Principal Sudder Ameen, Rae Shunker Lall, passed 10th February 1849.

Sitara Begum, (Plaintiff,) Appellant,

versus

Koolsoomoonnissa and Sheikh Khoorshed Alli, (Defendants,) Respondents.

SUIT laid at Company's rupees 1,086-1-3, increased by supplemental plaint to rupees 1,311-8-6, to obtain possession of one-sixth share of mouzah Buhporrah, pergunnah Moner, according to a deed of lease dated 7th April 1835, executed by the defendant Koolsoomoonnissa, with mésné profits from 1244 F. till the end of Falgoon 1254 F. and interest.

The plaint stated, according to the decision, that Koolsoomoonnissa granted a lease of the estate in question at an annual rent of Sicca rupees 51-8, of which rupees 21-14 were to be paid into the collector's hands on account of the revenue for the term of seven years from 1243 to 1249 F., both years inclusive, taking Sicca rupees 150, by way of security as a deposit, to be repaid at the end of the term of the lease, or the lease to be prolonged until the said deposit should be completely refunded, and that, after plaintiff had paid the rent as stipulated for 1243, the said defendant, by the advice and instigation of Khoorshed Alli, ejected her from possession and retained the security money, and that the deed of lease was executed and delivered through the agency of defendant Koolsoom's son, Aynooddeen. That defendant denied all knowledge of the plaintiff and granting or executing the lease in her favor, and said she had granted a lease in 1242 for a term of seven years to Khoorshed Alli, taking an advance of 100 rupees from him, and that the farmer remained in possession of the property from the commencement of the term till the end of 1245 F. and then obtained a fresh lease, or "putta mokurruree istimraree," at a jumma of 59 rupees from her, and is still in possession, having paid the Government revenue up to 1254 F. Khoorshed Alli's answer is to the same effect.

The principal sudder ameen, finding the execution of the deed of lease in favor of Khoorshed Alli, which is prior to that said to have been executed in favor of Nadir Alli, the husband of plaintiff, and

Khoorshed Alli's possession from 1242 F. duly proved, notwithstanding the production by plaintiff of some dakhilas, receipts for revenue paid into the treasury, made out in the name of Nadir Alli, as the person through whose agency the money had been paid, decided that the lease in favor of Nadir Alli was void, without giving any decision respecting its authenticity; or the reverse, and dismissed the suit, with costs.

The appellant urges that the deed of lease in favor of Khoorshed Alli is a collusive document, fabricated after the execution of that in favor of Nadir Alli; that the witnesses to it did not identify it as the document which had been executed in their presence; and that plaintiff having been put in possession and having retained possession for the first year of the lease, without opposition on the part of Khoorshed Alli, those circumstances are a proof of the non-existence of any lease to him up to that period.

I consider the enquiry in this case to be incomplete on the following grounds. In the first place, proof has not been taken, as it ought to have been, of the execution of the deed of lease under which Khoorshed Alli asserts himself to have been in possession from 1242 to 1245 F., inclusive. The defendants do not seem to have been called on to exhibit such proof in either of the proceedings held by the present or former principal sudder ameen, under the provisions of Regulation XXVI. of 1814, Section 10, and yet the ground of the decision is the prior execution of this document and the possession of Khoorshed Alli under it. It is not enough that the other defendant admits the authenticity of the deed, since it is the plea of the plaintiff that both defendants have colluded to defeat her rights by means of a pretended lease. Secondly, the plaintiff ought to have been, but was not, called upon to exhibit any proof of the fact of Nadir Alli's ejectment at the end of 1243, because defendants deny that he was ever in possession, as well as that he ever had any right to possession as lease holder, and plaintiff's right to recover possession depends upon whether her husband was ejected or not. If he held possession and lost it without the commission of any illegal act of the defendant Koolsoom, the latter would have a right to resume the management.

For these reasons, the decision of the principal sudder ameen must be reversed, and the suit be remanded for further enquiry after calling upon such of the parties as it may be deemed proper to exhibit proof on the points noticed above.

The value of the stamp will be refunded.

ZILLAH PURNEA.

PRESENT: D. PRINGLE, Esq., JUDGE.

THE 21ST FEBRUARY 1850.

Appeal No. 39 of 1848.

Sudder Ameen, Mr. Noney.

L. E. Burford, (Defendant,) Appellant,

versus

Boochund Sahoo, (Plaintiff,) Respondent.

Gobind Chund, Vakeel for Appellant.

Mirza Ahmud, Vakeel for Respondent.

FOR recovery of rupees 451-9, due on a bond. The case is thus stated by the sudder ameen. "The plaintiff sues to recover 451 rupees and 9 annas, principal and interest, due on a bond for 400 rupees, dated the 5th May 1847, for value of indigo seed purchased by defendant, who does not deny the claim, but pleads the seed was so very bad that it did not vegetate, by which he sustained great loss. This is inadmissible, because if the seed was bad, why did he purchase it and sign a bond for its value? The bond has been clearly proved by witnesses, so the amount is decreed, with costs."

In appeal, it is urged that an ikrarnamah taken by appellant from respondent as a guarantee for the quality of the seed was burnt by a fire which occurred in the factory of the former, the existence of which, and the failure of the seed to answer the description, were to be considered before decreeing this amount.

JUDGMENT.

The grounds on which this sum is awarded by the sudder ameen, notwithstanding appellant's objections, being deemed insufficient, numerous witnesses were here examined on both sides, but as upwards of three years have elapsed since the delivery of the seed and execution of the bond, dependance cannot be placed on many particulars connected with the transactions, as thus deposed to. Nor should these be left dependant on oral testimony. The respondent's witnesses would prove that all the seed received by the appellant was, after weighment, thrown into the same heap, a circumstance wholly improbable; while that stated by the witnesses of the appellant, as to the seed obtained from different parties, being invariably

kept separate, that its quality might afterwards be ascertained, is worthy of every credit. There is one reason, however, conclusive for dismissing this appeal, namely, that stated by appellant's own witnesses as to the seed in question being weighed off at three different times, namely, twice in Cheyte, and once in Bysak, the quality of which, being on the first occasion suspected, the ikrarnamah referred to was taken, by the appellant from respondent, at which time no bond was given the latter, nor until after the third weighing, in which interval, however, the appellant's suspicions had been confirmed, the ryots having objected to the seed, as it had not been found to vegetate. With the full knowledge of this, to give such bond, betrayed an ignorance on appellant's part which the courts cannot interfere to rectify. The appeal is therefore dismissed.

ZILLAH RAJSHAHYE.

PRESENT: G. C. CHEAP, Esq., JUDGE.

THE 5TH FEBRUARY 1850.

No. 134 of 1848.

*Appeal from the decision of Hurmohun Neogee, Moonsiff of Bhowanny-
gunge, dated the 18th of November 1848.*

Hurres Kishen Shah, Nubinchunder Shah, Kishto Shah, and Hur-
ree Shah, (Defendants,) Appellants,

versus

Dyamy Dasseah, (Plaintiff,) Respondent.

RESPONDENT sued for damages on account of an assault, laying her suit at 300 rupees, but the moonsiff decreed 20 only, with all costs. Against this decision the appellants (four of the original defendants) have appealed, pleading, *inter alia*, that no assault was proved; that the witnesses brought forward by the respondent lived at a distance, and not where the respondent resided; and that the moonsiff, though he had only decreed damages in 20 rupees, had saddled them (appellants) with all costs.

The alleged assault, according to the plaint, was committed on the respondent leaving the house of Hurmohnee, when respondent was abused, and her niece, Birma Mye, snatched away from her. The evidence, however, if it proves any thing, establishes that the respondent went to the house of Hurree Shah and Kishto Shah, who formed a marriage between Birma Mye, who was their sister's daughter, and one Ramcoomar Shah; and after this marriage respondent was turned out of the house. Hurmohnee was sister to Hurree Shah, and also aunt of the girl Birma Mye. This is a fatal variance, and not crediting that any assault was committed, on the contrary that the whole suit is frivolous and vexatious, I decree the appeal, and reverse the moonsiff's decision, making all costs in both courts chargeable to the respondent.

THE 8TH FEBRUARY 1850.

No. 38 of 1849.

Appeal from the decision of Moulvee Mojeebul Rahman, Moonsiff of Beaulah, dated the 20th of March 1849.

Mahomed Woaj, (Plaintiff,) Appellant,

versus

Baboo Khansomer and Faiemudden *alias* Furring Surkar, (Defendants,) Respondents.

THE appellant, formerly plaintiff, sued in the moonsiff's court for his *shuffa*, or right of pre-emption to 7 *beegahs* of land, held by Faiemudden in *jote*, and sold to Baboo Khansomer. The moonsiff dismissed the claim, as the plaintiff had no *huq-shuffa*, or right to pre-emption, he being a *dur-jotedar* under the seller; and a *ryot*, or tenant could not sue his landlord. The law officer of the court had also given a *futwa*, to the effect that no claim of pre-emption on the part of the plaintiff could be recognized under the Mahomedan law. Against this decision the plaintiff has appealed, and a long *wojoohat* has been filed, but containing nothing new. According to Macnaghten (Precedents, p. 47-48), the persons, who may claim the right of pre-emption, are "a partner in the property sold, a participator in its appendages, and a neighbour." As *dur-jotedar*, the appellant can be neither the first or second; and there has been nothing averred to show he was a neighbour. The moonsiff's decision therefore being quite proper, the appeal is dismissed.

THE 8TH FEBRUARY 1850.

No. 48 of 1849.

Appeal from the decision of Moulvee Nussuruddeen Hyder, Moonsiff of Kheytooparah, dated the 31st of March 1849.

Kashee Nath Bhadooree, (Plaintiff,) Appellant,

versus

Baluck Shekh, Rashoo Bewah, and Lall Mahomed Chuprassee, (Defendants,) Respondents.

THE appellant sued the respondents under their *kubooleut*, to recover rupees 4 and 1 *pte*, alleged to be due by them for rent, from Bysack 1254 to Sawun 1255 B. S., for 1 *beegah* and a half of *dur-mutter* land they occupied. The moonsiff dismissed the suit, as he did not credit the witnesses to the *kubooleut*, and the defendants had received no *pottah* from the plaintiff. He further held that it was not proved that he was seised of the land, his title to which was disputed by the party, who, he (plaintiff) alleged, had sold it. The

grounds of appeal are much the same as the plaint, only it is explained no *pottah* was given to the respondents as they had a *pottah* before. It is quite clear the right to the land is disputed, and that question must first be decided. I therefore see no reason for disturbing the moonsiff's decision, and dismiss the appeal, without calling on the respondents or claimant to appear.

THE 8TH FEBRUARY 1850.

No. 49 of 1849.

Appeal from the decision of Mr. A. DeLemos, Moonsiff of Shaheadpore, dated the 28th of March 1849.

Gugun Chunder Shah, (Defendant,) Appellant,

versus

Gunga Gobind Singh, (Plaintiff,) Respondent.

THE respondent sued to recover rupees 31, pies 6, being principal and interest, alleged to be due under a bond, dated 24th Kartick 1253 B. S. for rupees 25, and the moonsiff, as it was fully proved by the attesting witnesses that the money had been paid to the appellant, by the *gomashtah* of the *kotee*, and who (the *gomashtah*) at the solicitation of the appellant was summoned and deposed to the same effect, gave the plaintiff a decree. After reading the evidence I fully concur with the moonsiff that the appellant borrowed the sum of 25 rupees, and executed the bond, and therefore I affirm his decree, and dismiss the appeal. As the respondent has attended without a notice being served upon him, he must pay his own vakcel's fees.

THE 13TH FEBRUARY 1850.

No. 9 of 1848.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 27th of March 1848.

Joydoorga Dibbeah, Nubdoorga Dibbeah, and Nund Comar Bundopardhea, for himself and for guardian of Hurindur Narayun Bundopardhea, a minor, (Defendants,) Appellants,

versus

Shibnath Sandyal, after his death, Gobind Nath Sandyal, Gobind Rekha Dibbeah, and Anund Nath Sandyal, (Plaintiffs,) Respondents.

THE respondents, formerly plaintiffs, instituted this suit, to get the court to give effect to a boundary fixed by the ancestors of the parties, and who drew up a *solanameh*, or mutual agreement, among themselves when the boundary was fixed, so far back as the

4th Maugh 1238 B. S., corresponding with the 16th January 1832 A. D. The boundary was between the villages Tarra Barria and Nubeepore, and a *bruse-bundee*, or boundary with mud pillars, was thrown up to demark it. The principal sudder ameen first appointed an *ameen* (not the court one) to make a local investigation, but rejecting both his report, and map (*nuksa*) drew a boundary by guess on a piece of paper which he thought corresponded, and agreed with the boundary laid down in the *solanameh*. Not satisfied with this the defendants have appealed, and on the proceedings being gone through, the parties were advised to appoint as arbitrators Mr. Barry, the deputy magistrate of Serajunge, and Mr. A. DeLemos, the moonsiff of Shahzadpore, within whose criminal and civil jurisdiction the lands in dispute lay. To this they consented, and deposited 50 rupees for the travelling expenses of the arbitrators, who then proceeded to the spot, drew up a map and furnished a report, shewing that the boundary fixed by the principal sudder ameen did not assimilate with the local land marks, or that in the *solanameh*; that in the map they had, by a *dotted* line, defined the boundary made by the ancestors of the parties on carefully comparing the land marks with what was set forth in the *solanameh*. Against both this report and map a long petition was given in by the respondents on the 4th of June last, *more* than two months *after* the arbitrators had furnished their report, but to the objections against it I attach no weight; and the aspersions made against them I hold to be totally unfounded and uncalled for. Both the arbitrators are officers of experience, and fully capable of understanding, *when on the spot*, what was intended by the *solanameh*, and the *bruse-bundee* fixed after it was drawn up, to carry out its object. It is quite clear that the ameen's report was a false or wrong one, and that the boundary fixed by guess by the principal sudder ameen, without seeing the ground, was very different from the defined marks the arbitrators found when they visited *personally* the lands in dispute. It is quite clear also to me that the suit was instituted, *under a hope* that the court would alter the old, or *original*, boundary laid down in the *solanameh* on the 16th January 1832; but since the suit was filed on the 22nd September 1845, more than twelve years had elapsed before the complaint was made, and the boundary cannot be touched. I therefore, in reversal of the principal sudder ameen's decision, decree the appeal, and dismiss the respondents' claim to the land which they allege is within their boundary, and make all costs chargeable to them, except the amount deposited by the parties respectively for the arbitrators and paid over to them.

THE 13TH FEBRUARY 1850.

No. 19 of 1848,

*Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 26th of June 1848.*Jugdumbah Goopta, widow of Shib Sunker Sein, deceased,
(Plaintiff,) Appellant,*versus*Lukhee Goopta, widow of Bhowanny Sunker Sein, deceased, and
Gourmunnee Dasseah, (Defendants,) Respondents.

THE appellant instituted this suit to have set aside a deed of gift from Bhowanny Sunker, her father-in-law, to Lukhee Goopta, his wife, of an estate called *chuck* Hurree Narayun Koond. Plaintiff's husband was the son of Bhowanny Sunker, and his name was Shib Sunker. Plaintiff had sued summarily for rents of land situate within the *chuck*, when the claim under the deed of gift, or *hiba*, was set up, and the collector dismissed the suit, and referred the plaintiff to the civil court, hence this suit, laid at 2,550 rupees.

The deed of gift was registered on the 21st April 1827, and a person by name Shib Sunker appeared as moktear for Bhowanny Sunker, and acknowledged the execution of the deed, before it was registered; and as the present plaintiff, in another suit, had filed an answer admitting that such deed had been given, and though then only thirteen years of age, still the principal sudder ameen held she was *not* a minor, and therefore, on the evidence of one witness to the execution of the deed, dismissed the appellant's suit. Against this decision she now appeals. That it was her husband that appeared as moktear for the purpose of having the deed registered, I do not think at all clear, he is also made one of the attesting witnesses; and, in my opinion, though a widow, I doubt if a girl only thirteen years of age can be considered any thing but a minor, and was incapable of pleading at all. The execution of the deed is only deposed to by one witness, and therefore I do not hold it is fully proved, and adverting to my decision in the appeal case of Sooburna Dibbeah, appellant, *versus* Jugdumbah Goopta, respondent, (the plaintiff in this suit,) I think there is also in *this* case complicity. I therefore reverse the principal sudder ameen's decision, and decree the appeal, thereby declaring the deed invalid. The respondent will pay appellant's costs in this court, and the parties to pay their own in the principal sudder ameen's court.

THE 13TH FEBRUARY 1850.

No. 20 of 1848.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 14th of July 1848.

Sumboo Chunder Chowdree, (Plaintiff,) Appellant,

versus

B, Hurchunder Chowdree and Kalee Kishore Roy, (Defendants,) Respondents.

THE appellant sued to recover possession of a share of an estate mortgaged to him by B under a *kut*, or conditional deed of sale. As B resided in the Mymensing district, the notice of foreclosure was served through the judge of that zillah, and the nazir made a return to the effect, that though not *personally* served, the notice had been affixed to B's usual place of residence, and he filed an acknowledgment by two individuals to such service being so made. A practice before obtained here of taking *ex parte* proof of such service; but the plaintiff gave no proof, neither did he adduce any witnesses to an *ikrar*, or acknowledgment (alleged to have been given by B and filed by the plaintiff;) that he was aware of the service of the notice. This *ikrar* purported to be one given by B on the right of redemption being extended for two months by the mortgagee. The principal sudder ameen held, that, if such was the case, it was necessary a fresh notice should be served on the mortgager, and as this had not been done, he dismissed the suit. Against this decision the appellant appeals, and as it has been ruled by the Sudder Court that "an extension (of the time or period for redemption) *alone* does not render necessary a renewal of notice" (Prannath Roy *versus* Rajah Govind Roy, 5 Sudder Dewanny Adawlut Reports, 37,) the principal sudder ameen has decided on a wrong assumption. Again, if he was not satisfied that the notice had been *duly served*, he should, instead of dismissing the plaintiff's suit, have nonsuited him, as, after an order of dismissal, the plaintiff could neither serve the notice again, nor bring a fresh suit, *after* the expiration of the period of redemption under such notice. On these grounds the case is sent back to the principal sudder ameen, to pass (if he considers the notice was not served) an order of nonsuit. The value of the stamp on which the petition of appeal is written will be returned to the appellant, and the usual order as regards costs.

ZILLAH SARUN.

PRESENT: H. V. HATHORN, ESQ., JUDGE.

THE 6TH FEBRUARY 1850.

No. 5 of 1849.

A Regular Appeal from decision passed by Syed Mahomed Waheedooddeen, late Moonsiff of Sewan, dated the 27th December 1848.

Sheoraj Rai, (Defendant,) Appellant,

versus

Ruttoo Rai, (Plaintiff,) Respondent.

CLAIM, Company's rupees 31, 9 annas, 3 pie, on account of arrears of rent for 1254 and 1255 Fussily.

Plaintiff, the farmer of a $3\frac{1}{2}$ anna share in the village of Ekma, pergunnah Baal, instituted this suit on the 23rd June 1848, claiming arrears of rent on account of 9 beegahs, 5 cottahs of land, alleged to have been cultivated by defendant and his brethren, stating the rent to be Company's rupees 23-2 per annum.

Defendant Sheoraj absolved his brethren, saying that he was the ostensible ryot, and cultivated only 8 beegahs at 20 rupees yearly, and produced a former lease and two receipts in support of payment.

The moonsiff of Sewan decreed for plaintiff on a "wasilbakee" account prepared and attested by the putwarry, and another witness rejecting the lease and receipts produced by Sheoraj, which he observed were apparently *rubbed up* for the occasion.

JUDGMENT.

The old lease presented by Sheoraj, the principal defendant, (dated 28th Jyte 1244 Fussily,) has certainly the appearance of having undergone same process to give it an antiquated look, it has not been attested, and is in the name of one *Byjoo*, who is not admitted, or proved to be defendant's uncle as pleaded. The pottah is not therefore of itself a valid document in support of defendant's plea. Nor did defendant (Sheoraj) attend the moonsiff's court to attest the receipts filed by him in support of payment. On the other hand, the village putwarry and another witness have sworn to the adjustment of defendant's account in *defendant's presence*, and their promise to liquidate the arrears in twelve days. I therefore see no reason to interfere with the moonsiff's decision. The other defendants against whom the decree is also given do not appeal.

ORDERED,

That the decision of the moonsiff of Sewan in this case be confirmed, and the appeal be dismissed with costs.

THE 6TH FEBRUARY 1850.

No. 20 of 1849.

A Regular Appeal from a decision passed by Syed Mahomed Waheedood-deen, late Moonsiff of Sewan, dated the 17th January 1849.

Sheoraj Rai, (Defendant,) Appellant,

versus

Dhoondhur Rai, (Plaintiff,) Respondent.

CLAIM, Company's rupees 15, 2 annas, 9 pie, on account of arrears of rent for 1253 and 1254 Fussily, with interest.

Plaintiff instituted this suit on the 4th July 1848, setting forth that he was the farmer of Bekum Rai's share, amounting to 2 annas and 6 pie, in the village of Ekma, pergunnah Baal, and that defendant and his brethren had cultivated 2 beegahs, 17 cottahs, 13 dhoors in 1253 and 1254 Fussily, and the balance abovenoted as per putwarry's account was due.

Defendant filed an old pottah of 1242 Fussily, in the name of his father, for 2 beegahs, 13 cottahs, at 8 rupees, 5 annas, 6 pie per annum, and presented receipts for 1253 and 1254 Fussily, but did not attend to attest the validity of these documents.

Plaintiff filed his wasilbakee, which the village putwarry and two other witnesses authenticated, proving that it had been prepared in *defendant's presence* (the other five defendants in this case do not appeal,) and that they had acknowledged the correctness of the account, and promised to pay in eight days.

The moonsiff, upon the evidence adduced, decreed in favor of plaintiff, against *all* the defendants, rejecting the defendant's unattested documents, which had the appearance, it was observed, of being written with fresh ink.

. JUDGMENT.

I find no sufficient reason for interfering in this case. The putwarry and two other witnesses have attested the execution of the rent account in *defendant's presence*, and to which they, the cultivators, assented, and promised payment in a specific time. The documents filed in refutation were left in the lower court unattested, and defendants neglected to attend.

ORDERED,

That this appeal be dismissed with costs, and the decision of the moonsiff of Sewan in this case be affirmed.

THE 6TH FEBRUARY 1850.

No. 19 of 1849.

A Regular Appeal from a decision passed by Syed Mahomed Waheed-dooddeen, late Moonsiff of Sewan, dated the 17th June 1849.

Sheoraj Rai, (Defendant,) Appellant,

versus

Dhoondhur Rai, (Plaintiff,) Respondent.

CLAIM, Company's rupees 14, 2 annas, 3 pie, on account of arrears of rent in 1254 Fussily.

This suit was also instituted on the 4th July 1848. Plaintiff set forth that defendant and his brethren (who do not appeal) had cultivated, in 1254 Fussily, 4 beegahs and 17 cottahs of land, at 2 rupees 12 annas per beegah, in Byedar's share held by plaintiff in farm, and to the rent of which he was entitled.

The defendant, Sheoraj, declared the rent to be 12 rupees, 6 annas only, on account of 4 beegahs, 13 cottahs, and produced an old pottah and receipts.

The moonsiff rejected the documents filed by defendants being apparently fabricated, and gave credence to the claim of the farmer, supported by the putwarry's account, and the evidence of two witnesses.

JUDGMENT.

This decision also must be affirmed. The preparation of the wasil-bakee in *defendant's presence*, and their acknowledgment of its correctness before two witnesses are proved, and the documents filed by defendants in refutation were left authenticated. (The other defendants do not appeal.)

ORDERED,

That this appeal be dismissed with costs, and the decision of the lower court be affirmed.

THE 13TH FEBRUARY 1850.

No. 9 of 1849.

A Regular Appeal from a decision passed by Syed Asud Ali, late Moonsiff of Chuprah, dated the 28th December 1848.

Nundhoo Mahtoe, (Plaintiff,) Appellant,

versus

Hurrihur Dutt, deceased, Sheopershud Singh, and Moorlidhur, sons of Sunker Dutt, (Defendants,) Respondents.

Keolapershad, Brijmohenlal, and Ramput Sing, (sons of Gungapershad,) Teka Moktar, third party, Defendants by precaution.

CLAIM, for possession of 2 beegahs of land in 1 anna 1 pie share in mouzah Turwa, pergunnah Baal; valuation Company's rupees 110.

This suit was instituted on the 24th September 1847. The plaintiff set forth that the defendants (by precaution) had borrowed from plaintiff and Teka (third party) Sicca rupees 1,300, and pledged as security one-sixth share of mouzah Turwa, pergunnah Baal, the condition being that the loan was to be repaid in three years on the property pledged to be considered as transferred by absolute sale; the period elapsed, and after the preliminary proceedings, required by Regulation XVII. of 1806, had taken place, plaintiff and Teka Moktar obtained a decree in the principal sudder ameen's court, dated 15th June 1842, for possession.

In execution of this decree, the principal defendants in this case, Hurrihur Dut and Moorlidhur, interposed, claiming the right to 2 beegahs of land in the said village by a deed of sale previously executed by Gungapershad, the father of the recent vendors, in favor of their ancestor. The principal sudder ameen held a summary proceeding upon this objection preferred, and admitting the claim stayed the decree, giving the decreeholders the option of depositing the defendants' (objectors') lien of 34 rupees as a condition for obtaining possession (the objectors having been no parties to this suit against the defendants by precaution.) In this summary order, however, the defendants' claim to the 2 beegahs in dispute was incorrectly considered and styled a three years' engagement, whereas it was a loan taken, agreeing to execute a three years' assignment within a month, the penalty of neglect being the absolute transfer by sale of the said 2 beegahs in consideration of the 34 rupees borrowed. The doubt thrown by the principal sudder ameen upon the nature of defendants' deed, by the wording of this summary proceeding, apparently led to the institution of this suit. The third party (Teka) sides with plaintiff, to whom he has sold his rights and interests.

JUDGMENT.

The late moonsiff of Chupra has, in my opinion, taken a right view of this case dismissing the plaintiff's claim and upholding the bill of sale for 2 beegahs executed by Gungapershad, under date 21st June 1805. The deed of sale is forthcoming and alluded to in the collector's measurement papers of the village, and plaintiff, in his reply, does not deny the defendants' assertion of having been in uninterrupted possession for forty-three years. The terms of the agreement, although argued by the plaintiff to be a temporary assignment, clearly convey an irrevocable transfer by sale. It is thus worded: "and if the seller should delay or neglect to execute a bill of sale, in such case the purchaser will consider this ikrarnamēh as an equivalent, and he will take possession as his own proprietary right." This claim of plaintiff, with a view of ejecting the defendants, must be dismissed.

ORDERED,

That this appeal be dismissed with costs, and the decision of the moonsiff of Chupra be affirmed.

THE 20TH FEBRUARY 1850.

No. 17 of 1849.

A Regular Appeal from a decision passed by Moulvee Ali Buksh, Moonsiff of Pursa, dated the 8th January 1849.

Sheik Koowut Ali, (Defendant,) Appellant,

versus

Sheik Nadir Ali, (Plaintiff,) Respondent.

CLAIM for possession of 16 cottahs of land, in chuk Jamali, mouzah Jugdeespoor, pergunnah Cheraud, with mesne profits from 1243 to 1255 Fussily.

This suit was instituted on the 14th June 1848. Plaintiff states that his ancestor Zeaoollah borrowed 10 rupees from defendant and gave him a lease of 16 cottahs of land in consideration thereof, at a rental of 2 rupees per annum, and the difference between the rental at 2 rupees and the interest on the advance at 1 rupee 4 annas (or 12 annas) was to be yearly paid to plaintiff. This annual sum, it is alleged, was paid up to 1242 Fussily, and then ceased. Plaintiff calculates that, at the rate of 12 annas per annum from 1243 to 1251 Fussily, the whole amount advance due to defendant became liquidated, and that up to 1255 Fussily an excess balance of rupees 11-10-8-6-4 is due to him, plaintiff, for which excess, as also to recover possession, he brings this action.

Defendant denies the claim *in toto*, representing himself to be plaintiff's cousin and brother-in-law, and declaring that he obtained possession of the 16 cottahs of land, by right of inheritance from his maternal father, Kheiroollah, attributing the suit to enmity.

The moonsiff has decreed this land to plaintiff, with the excess balance claimed, upon the oral evidence of three witnesses, produced by plaintiff.

JUDGMENT.

This case must be sent back for re-trial. Defendant denies the lease on advance alleged to have been executed on 5th Asin 1232 Fussily, and the moonsiff has decreed possession of *miscellaneous* land, in possession of defendant for 24 years, in the face of such denial, upon oral evidence only, without calling for the counterpart of lease to attest the truth of plaintiff's statement, and without any *specification of the boundaries* of the miscellaneous land which he decrees.

ORDERED,

That this case be remanded for re-trial, with refund of stamp fees, and the decision of the moonsiff of Pursa be annulled, and the costs to be adjusted on final adjudication.

THE 20TH FEBRUARY 1850.

No. 35 of 1849.

Regular Appeal from a decision passed by Syed Asud Ali, late Moonisiff of Chupra, dated the 25th January 1849.

Bhagirut Lal, (Defendant,) Appellant,

versus

Nuzzeroo Khan, (Plaintiff,) Respondent.

CLAIM, to annul a rihunnameh, dated 25th Phalagoon 1247 Fussily, executed by Beebee Mehun and Shakroo in favor of Bhagirut Lal, pledging certain property in Nubbeegunge, pergunnah Manglee, for a loan of Company's rupees 51.

This suit was originally instituted by plaintiff on the 2nd January 1845, and dismissed by the moonisiff of Chupra with costs, on the 21st November 1845; and afterwards in appeal returned for re-trial by the principal sudder ameen in consequence of insufficient enquiry. The same moonisiff has now decreed the "gurha" only in favor of plaintiff with costs in proportion; the defendant Bhagirut appeals in dissatisfaction.

This suit arose in consequence of Shakroo and Musst. Mehun (other defendants in this suit) having transferred the land in dispute to Bhagirut Lal for a loan of 51 rupees: plaintiff originally sued all the three defendants in order to cancel this deed of transfer altogether, but subsequently withdrew his claim to all, excepting a small spot of low land to the east of plaintiff's house, and south of Shakroo's habitation (about 10 or 12 doors of land) which remains to be disposed of.

The moonisiff decrees this "gurha" land to plaintiff upon the evidence of witnesses, who say that formerly there was a clump of bamboos on the spot, and that plaintiff's ancestor used to cut and carry away the said bamboos, and take earth from the said piece of land for repairing his house, &c.

The parties appeared before me this day, and the plaintiff was examined as to the exact nature of his claim. He has admitted that Shah Gholam Nujjuf is the present *proprietor* of the land, and which appertains to the durgah of Sha Arzansahil, to whom Nubbeegunge was assigned rent-free for this special purpose; and that he (plaintiff) possesses *no proprietary right* in the land whatever, but claims the right of possession being in the vicinity of his houses. He further asserts that his ancestor obtained all the land upon which his premises are situated from Maasoon Khan, the malik of talooq Burrumpoor, by gift, but that he holds no document in proof of such assignment; in fact, it appears clear from the statement of both parties, that neither plaintiff nor defendants have any proprietary right whatever in the land claimed, which seems to appertain to the land originally assigned to the durgah, nor have either proved any

title to the right of occupancy; for it is likewise conceded that it has been *waste* land for many years. The actual proprietor is at liberty to assign the disputed land to whomsoever he pleases.

ORDERED,

That this decision of the moonsiff of Chupra in this case be annulled, and the claim of plaintiff be dismissed: the costs to be paid by the parties respectively.

THE 22ND FEBRUARY 1850.

No. 25 of 1849.

A Regular Appeal from a decision passed by Moulvee Ali Buksh, Moonsiff of Pursa, dated the 16th January 1849.

Purmeshur Dut Tewary, (Defendant,) Appellant,

Adit Tewary, Umbica Tewary, and Chuttree Tewary, minor, for self and as guardian of, (Plaintiffs,) Respondents.

CLAIM, for possession of 6 biswas of birt land in Herajee, pergunnah Kusmer, and reversal of summary orders under Act IV. of 1840; valued at Company's rupees 40, 8 annas.

This suit was originally instituted on the 27th March 1846, and decreed in favor of plaintiffs by the former moonsiff of Pursa, and in appeal reversed by the principal sudder ameen, and the case nonsuited, because the valuation (amounting to Company's rupees 54) was wrongly estimated, viz. on the selling price instead of at eighteen times the annual produce. The new estimate, however, is *less*, and the value of the stamp continues the *same*, and the decision of the case has thus been unnecessarily delayed for two years.

The present moonsiff upholds the former decision of his court, observing that the merits of the decision were not affected by the nonsuit, occasioned by a wrong valuation.

The nature of the claim is as follows:—Plaintiffs, the heirs of Ram-sahye, state that Devidut, their great-granduncle, who had no issue, gave 6 cottahs of birt land situated in mouzah Herajee (being his one-fourth share of 1 beegah and 4 cottahs) to Birjmohun for 6 cottahs of land in Jaintipoor, and which Birjmohun exchanged and transferred to them, and Ishur Dut also transferred in exchange his 6 cottahs of land in Hirajee, and thus with their own 6 cottahs they are in possession of 18 cottahs. Purmeshur Tewary, on the other hand, maintaining that the heirs of Purtab and Jugnaraïen died without issue, and no such transfers took place, and thus plaintiffs, and the defendants by precaution (the heirs of Gobind Tewary,) are entitled to one-half, and defendant, the heir of Sooroojmun Tewary, to the other, the remaining three shares having lapsed in default of heirs. The parties first took their case into the criminal court, but

as neither party appeared to be in actual possession, the subject of dispute was ordered to be attached.

The decision of the moonsiff, which is now sought to be reversed, rests entirely upon the evidence of certain witnesses taken by the peshkar of the moonsiff's court, deputed to the spot for local enquiry, but he admits that *neither of the parties were present* when the evidence was taken. But independent of the want of evidence adduced, the whole proceedings in this case are irregular. The suit is for possession of 6 cottahs of miscellaneous land assumed to be birt and rent-free, and is founded upon a deed of gift obtained by Birjmohun Tewary and exchanged with plaintiffs for other lands in Jaintipoor, but the *boundaries of this miscellaneous spot of land claimed are not set forth*, which would render execution, (if the decree be upheld,) impossible; secondly, a decree is given by the lower court for *rent-free land* denominated birt, without any proof of the land being of that description; and thirdly, the claim rests upon a deed of transfer, which, although disputed, is not filed. For the above reasons, I am again compelled to return this suit to the moonsiff of Pursa for revision, with reference to the above remarks.

ORDERED,

That this appeal be decreed with refund of stamp duty to appellant, and the decision of the lower court be reversed, and the case be returned to the moonsiff's court for re-trial: the costs to be awarded on final adjudication.

THE 26TH FEBRUARY 1850.

No. 21 of 1849.

A Regular Appeal from a decision passed by Syed Asud Ali, late Moonsiff of Chupra, dated the 11th January 1849.

Hurchurn Mahtoe, (Defendant,) Appellant,

Sheodeal Saho, (Plaintiff,) Respondent.

CLAIM, for possession of a tiled house and fourteen mangoe trees, &c., in mouzah Raighumberpoor, pergunnah Baal, valued at Company's rupees 24.

Plaintiff instituted this suit on the 2nd August 1848, setting forth that defendant had sold to him the said house and his rights and interests in the trees on the 11th Bhadoon 1252 Fussily, (28th August 1845,) for the consideration of rupees 24, and had given possession of the trees, but not of the house, on the plea that another house in preparation was not ready for his reception, and that afterwards defendant had dispossessed him of the garden in Sawun 1254 Fussily, and he accordingly sues for possession of both, producing two witnesses who attest the bill of sale.

Notice was served on the defendant, and a receipt was filed by the nazir's peon, purporting to have been executed by the defendant himself, attested by two witnesses, promising to attend in fifteen days.

The defendant not appearing, the peon's evidence was taken to having served the notice, and the witnesses named in the receipt were *twice* summoned, but were reported not to be found. Upon this the suit was tried *ex parte*, and a decision given in favor of plaintiff for the house and trees claimed.

JUDGMENT.

In appeal, defendant pleads that he never heard of the case, and that the receipt is a forgery, and should have been attested by the evidence of the witnesses whose names are attached, and that he never executed any bill of sale or took a *cowree* from plaintiff on this account, ascribing the false claim to the enmity of one Bashistnairain Singh, who was opposed to the maharajah, with whom he, defendant, sided.

The moonsiff has not attended in this case to the provisions of the law. By Clause 2, Section 21, Regulation XXIII. of 1814, it was his duty, before trying the case *ex parte*, to take the evidence of the witnesses to the service of the process, besides the peon, as declared necessary by the Court's Construction No. 775. It would also have been more satisfactory if the evidence of Thakoorpershad, (who is alleged to have signed the bill of sale on behalf of defendant) had been taken, and also that of Gooroopershad, the alleged scribe.

ORDERED,

That the decree of the moonsiff of Chupra be annulled, with refund of stamp duty to appellant, and the case be sent back for re-trial: the costs to be adjusted on final adjudication.

ZILLAH SHAHABAD.

PRESENT: H. BROWNLOW, Esq., JUDGE.

THE 7TH FEBRUARY 1850.

No. 1 of 1849.

Regular Appeal from the decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated the 28th December 1848.

Raja Singh and six others, (Plaintiffs,) Appellants,
versus

Beesoo Singh and forty-nine others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiffs (appellants) on the 2nd July 1847, for the recovery of rupees 1,273-11-7, being arrears of revenue due from the defendants for the years 1248 to 1253 F., for 48 beegahs of land, situated in Taul Burraree, talooka Bhudour, pergunnah Bhojepoor.

Plaintiffs state that mouzah Burraree is the property one moiety of Baboo Dyal Singh and others, and the other moiety being divided into four puttees of 2 annas each, they hold 1 anna in one of them, belonging to Thakoor Singh, agreeably to an award of the civil court passed in favor of Pultun Singh, their ancestor, on the 8th February 1812. That the defendants took a lease from the plaintiffs' ancestor of their share of the mouzah, consisting of 48 beegahs, from 1238 to 1247, previous to which the whole of it was waste land, at a progressive jumma, viz. rupees 10 for the first year, and rupees 11 for the subsequent years of the lease. That the defendants discharged the rent of only one year, and having withheld the remainder, the plaintiffs' ancestor was induced to sue them for the revenue due from 1239 to 1246 F., when they set up a plea of proprietary right, which was overruled, and the plaintiffs' ancestor obtained a decree on the 3rd October 1840, which was upheld in appeal on the 30th March 1842. That upon the termination of this litigation, plaintiffs served the defendants with a notice, prohibiting them to cultivate without renewing their pottah on pain of being subjected to a payment of rupees 2-8 per beegah for rubbee, and rupees 5 for sugarcane lands; but that in disregard of this warning, the defendants cultivated and again withheld the rents, which led to the institution of another civil action against them, for the rent of 1247, agreeably to the lease, and for that from 1248 to 1252 F., according to the notice.

That this suit having been nonsuited, plaintiffs brought two separate actions, one for 1247, and the other for 1248 to 1253 F., the former of which was decreed on the 16th June 1847, and the latter nonsuited a second time on the score of obscurity; they accordingly now advance it *de novo*.

Beesoo Singh, one of the defendants, disowns cultivating a single biswa of the plaintiffs' lands, urging that they have evidently brought this suit with the view to establish a right of property to 48 beegahs; the kubooleut relied upon by them making no mention of that quantity. That the plaintiffs do not state the area of mouzah Burraree, nor the title under which they claim 48 beegahs, seeing that the estate has not been partitioned under Regulation XIX. of 1814, but continues in the joint undivided occupation of all the sharers. That the decree of 1812, alluded to by the plaintiffs, was passed on a compromise, in which it was stipulated that their ancestor should obtain possession of a three pie share of talooka Bhudour; but it is unaccountable how the plaintiffs now pretend to 1 anna, and that the plaintiffs having sued a number of ryots have acted in contravention of Construction No. 849.

The principal sudder ameen decreed this case in favor of the plaintiffs for the sum of rupees 353-9½. He was of opinion that a decree of the civil court, dated the 18th May 1841, was decisive of their title to a 1 anna share, and that from a measured area of beegahs 491-19-5, their share was equal to beegahs 41-3-4, the revenue due on which, from 1248 to 1253, calculated at the rate of 1 rupee per beegah, amounted, with interest, &c., to the sum above specified.

The appellants object to the reduction in the quantity of land owned by them, as well as in the rate; affirming that the ameen, commissioned by the court, colluded with the respondents, and trimmed the papers to suit their ends in the appellants' absence, and that, as regards the rent, in addition to what the oral evidence discloses, other shareholders have obtained decrees both summary and regular for rent at the rate sought by the appellants.

I am of opinion that the decision of the principal sudder ameen is wrong, and must be reversed for the following reasons:

The plaintiffs have instituted their present action for arrears of rent against Beesoo Singh and Muheeput Singh, the former ticcadars, and thirty-seven other individuals. Now there is not one particle of evidence to shew that these thirty-nine people *conjointly* cultivated this parcel of land of 48 beegahs, but on the contrary the putwarry's papers, filed by the plaintiffs, shew that those whose names appear therein had separate holdings with distinct jummas. Under the spirit, therefore, of Construction No. 860, and the decision of the Sudder Dewanny Adawlut of the 25th August 1842, *vide* Sudder Dewanny Reports, page 112, vol. VII., this case should have been nonsuited.

A zemindar may sue his immediate under-tenant for arrears of rent, but he has no right whatever to sue the under-tenants of the latter also, which is the category in which the plaintiffs are desirous that these thirty-seven individuals should stand.

I therefore reverse the judgment of the lower court, and nonsuit the plaintiffs, with all costs of both courts.

THE 7TH FEBRUARY 1850.

No. 3 of 1849.

Regular Appeal from the decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated the 28th December 1848.

Beesoo Singh, (Defendant,) Appellant,

versus

Raja Singh and six others, (Plaintiffs,) Respondents.

THIS is another appeal from the decision of the principal sudder ameen noticed in the preceding number.

The plaintiffs having been nonsuited in that case, the decree of the lower court, in which the appellant was cast, becomes, of course, null and void. A copy of my judgment in No. 1 will suffice for this.

THE 8TH FEBRUARY 1850.

No. 2 of 1849.

Regular Appeal from the decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated the 22nd December 1848.

Goodree Singh, (Defendant,) Appellant,

versus

Juggoo Singh, (Plaintiff,) Respondent.

THIS action was preferred by the plaintiff (respondent) on the 4th January 1848, for the annulment of a deed of sale of a 1 anna 4 pie share of a talooka More Serae, pergunnah Saseeram, dated the 10th January 1842.

The plaintiff asserts that, having enforced a decree, which he had acquired against Unjoor Singh and Odeet Singh, the defendants, from the moonsiff of Saseeram, on the 11th February 1839, 1 anna and 4 pie of muzah More Serae was attached and ordered to be sold, when Odeet Singh compromised with him for the sum of rupees 400, agreeably to a bond dated 26th March 1843; paying rupees 100 in cash, and promising to make good the balance in instalments, under a pledge of the aforesaid 1 anna and 4 pie of More Serae. That Odeet Singh having failed in the fulfilment of his engagement, plaintiff put the decree in force a second time, but was precluded from bringing the mortgaged property to sale, by Goodree Singh having opposed it by the production of a deed of sale in his favor from Odeet Singh; for the annulment of which the

plaintiff now sues, urging that it is a fictitious and fraudulent transaction designed to evade his dues; the vendor and vendee being shareholders and residing together.

Goodree Singh answers that the property to which he had a right of pre-emption was not under attachment up to the date of his purchase, nor does he reside and board with Odeet Singh; that the absence of the cazee's seal or registry does not invalidate a deed, and that the property was not mortgaged to the plaintiff.

The principal sudder ameen decreed this case in favor of the plaintiff, judging the transaction to be a collusive one on the part of the contracting parties, who are closely related to each other, the property being likewise under sequestration at the time, and the deed of sale being unattested either by the cazee or the register, which made its genuineness very questionable.

In appeal, it is pleaded that the appellant and Odeet Singh have been separate for a long time; that no proclamation prohibiting the alienation of the property was in force when he purchased it; the attachment alluded to by the principal sudder ameen having been virtually withdrawn by the partial liquidation of the decree and the execution of a bond for the balance, and that the appellant's purchase being long anterior to the instalment bond entered into by Odeet Singh, the impignoration alleged by the respondent does not vitiate his bargain, to which he was invited in virtue of his right of pre-emption.

The fourth paragraph of Construction No. 588, which rules that a defendant may legally alienate his property prior to proclamation of attachment under Clause 2, Section 5, Regulation II. of 1806, has been held by the Sudder Court to be applicable only to *bonâ fide* sales, *vide* page 191, vol. VI., of the Sudder Dewanny Reports. Now there is no doubt whatever in my mind that the deed of the 10th January 1842 can only be characterised as a fraudulent and evasive transaction between Goodree Singh and Odeet Singh, to defeat a legal liability. This instrument the principal sudder ameen has very properly annulled. The judgment of the lower court is confirmed, and the appeal dismissed, with costs.

THE 9TH FEBRUARY 1850.

No. 7 of 1849.

Regular Appeal from the decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated the 19th January 1849.

Rampersaud and Jhomuk Lall, (Plaintiffs,) Appellants,

versus

Chowdry Sheosahoy Singh and thirty others, (Defendants,)

Respondents.

THIS suit was instituted by the plaintiffs (appellants) on the 17th January 1848, for the possession of beegahs 62-17-19 of land, per-

taining to Sheepoor Roopnarain, pergunnah Punwarah, together with the usufruct thereof for the year 1254 F.

Plaintiffs state that mehal Sheapoor Roopnarain was sold for arrears of Government revenue on the 17th November 1846, under the provisions of Act I. of 1845, and purchased by them; but that previous to the sale there was a dispute between the proprietors of that mehal, which was the property of thirty-five individuals, and Chowdry Sheosahoy and others, the proprietors of talook Beegwa, pergunnah Punwarah. That the proprietors of Beegwa prosecuted Ikram Singh and others, in all fourteen individuals, out of the thirty-five owners of Sheepoor Roopnarain, when one individual named Kalee Pershad was appointed arbitrator to settle the dispute. That the arbitrator, on the 15th September 1841, determined beegahs 62-17-19 of land to belong to mouzah Khass Dehree, talooka Bugwa, the property of Sheosahoy Singh, though the land in reality appertains to mouzah Sheepoor Roopnarain, and the plaintiffs have acquired a right to it since their purchase of the estate; and the award of arbitration, which was passed with the assent of only fourteen of the proprietors, in the face of the objections urged by the heirs of Simbhoo Panday, one of the shareholders, who was not sued, cannot, under the provisions of Construction No. 744, and paragraph 4, Circular Order of the 11th January 1839, affect the interests of the twenty-one others, whose representatives the plaintiffs have now become by purchase.

Sheosahoy Singh, Nursing Narain Singh, and others, defendants, answer that the land sued for by the plaintiffs has hitherto been in their occupation as a component part of mouzah Khass Dehree, attached to talooka Bugwa, and never formed a part of mehal Sheepoor Roopnarain. That on the proprietors of the last named estate disputing their right to the land at issue, it was adjudged by arbitration to appertain to Khass Dehree. That this claim is opposed to the provisions of Section 16, Regulation III. of 1793, and that the award of an arbitrator is, in the absence of proof of bribery and collusion, intangible, under the provisions of Section 9, Regulation XVI. of 1793.

The principal sudder ameen dismissed this suit, remarking that, as the land, which the plaintiffs sue to establish as theirs, pertained prior to the revenue sale to mouzah Khass Dehree, the property of the defendants, Sheosahoy and others, agreeably to an award of arbitration, which has long since become final, and was tacitly assented to by the proprietors of mouzah Sheepoor Roopnarain,—the present claim was inadmissible.

In appeal, it is repeated that the award in question being a collusive one, and having been passed in a suit in which only fourteen individuals out of a body of proprietors consisting of thirty-five persons were parties, cannot prejudice the rights of those who were not sued under the rules quoted in the plaint, and must be set aside, and that the arbitration was repeatedly protested against by various

shareholders of Sheepoor Roopnarain, copies of whose petitions the appellants allege are with the record of the case.

The decision of the principal sudder ameen, in my opinion, is perfectly correct, as this very identical parcel of land, viz. beegahs 62-17-19, was adjudged by the sudder ameen in a regular suit, on the 15th September 1841, to form part and parcel of Khass Dehree. This judgment never having been appealed against has now become final by law, nor could we wish for better proof of the integrity of the arbitrator's award, upon which the sudder ameen's decision was based, than in the fact of the remaining twenty-one individuals refraining from instituting any *action* in court, charging Kalee Pershad with partiality and corruption, or otherwise, from that date until the 17th November 1846, when the property passed into other hands by sale.

The judgment of the lower court is confirmed, and the appeal dismissed, with costs.

THE 15TH FEBRUARY 1850.

No. 8 of 1849.

Regular Appeal from a decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated the 22nd January 1849.

Baboo Cheithroo Singh, (Plaintiff,) Appellant,

versus

Deepnath Singh and eleven others, (Defendants,) Respondents.

THIS action was preferred by the plaintiff (appellant) in order to be maintained in the possession of a 4 annas share of talooka Seanwuk with its dependencies, and to be enrolled in the register of the collectorate as proprietor of the same, as well as to recover rupees 210, the mesne profits of the estate for the year 1255 F.

Plaintiff alleges that talooka Seanwuk, pergunnah Saseeram, is the ancestral property of the litigating parties, having been acquired by Soomer Singh, their common ancestor. That Soomer Singh had three sons, the first of whom, Teela Singh, was the ancestor of Phekoo Singh; the second, Chintamun Singh, the ancestor of Chetoo Singh, the plaintiff, Kunnya Singh, and others; and the third, Byjoo Singh, the ancestor of Deegah Singh and others, the defendants. That Phekoo Singh prosecuted the defendants in this case, and having obtained a decree, dated the 27th August 1833, afterwards relinquished his share of the estate. That the defendants consequently became entitled to one-half of the talooka, and that of the other moiety, one-fourth is the right of the plaintiff, and the other that of Kunnya Singh and others. That the defendants have appropriated the Bhudwee crops of 1255 F., and oppose the plaintiff in his possession, and that though the decennial settlement of 1197 was effected in the names of Deegah Singh and Kutwarroo Singh, the ancestors of the defendants, whose names were inserted in the register of the

collectorate, the plaintiff nevertheless continued in occupation as an under shareholder.

Deepnath Singh and Bishen Dyal Singh, the defendants, urge that the plaintiff is not a shareholder, nor was the talooka acquired by Soomer Singh, but by Sheo Dutt Singh, the ancestor of Deegah Singh, Kunnya Singh, and Buruth Singh, among the defendants, and by Dutel Singh, the ancestor of Kutwarroo Singh. That since the conclusion of the decennial settlement they have been in possession of a moiety of the estate, and that, in the suit of Phekoo Singh, the defendants were established to be shareholders of 8 annas; on which occasion, if the plaintiff actually held a 4 annas share, he would of course have been included as a defendant.

Soorujnath Singh and others, the defendants, side with the plaintiff.

The principal sudder ameen dismissed this case in default of proof, inasmuch as beyond the oral testimony of a few witnesses in whom he placed no reliance, there was nothing adduced by the plaintiff to substantiate his claim; the decree of the 27th August 1833, it is observed by that officer, fails in proving him to have been in occupation.

Nothing new is urged in appeal, and I entirely agree with the principal sudder ameen in the conclusions at which he has arrived. Not a tittle of satisfactory evidence upon which we could safely rely has been adduced by the plaintiff to prove his right as a shareholder in this estate. His leading witness, the putwarry of the place, tells us, on the 28th December 1848, that the talooka was acquired by Soomer Singh, forgetful that, on the 18th July 1833, when Phekoo Singh's case was *coram judice*, he deposed on oath that this same estate was the acquisition of Sheo Dutt Singh and Delal Singh; it is strange also if the plaintiff was the prominent shareholder he wishes us to believe him to have been throughout, that he should not have been associated with the other defendants in the action of 1833. The immunity which he enjoyed from molestation in that suit is conclusive evidence of his having no right to appear as plaintiff in this. The judgment of the lower court is confirmed, and the appeal dismissed, with costs.

THE 16TH FEBRUARY 1850.

No. 9 of 1849.

Regular Appeal from the decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated the 23rd January 1849.

Thakoorpershad and Rajhawun Ojha, (Defendants,) Appellants,

versus

Mr. R. Solano, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff (respondent) on the 16th February, 1848, for the recovery of rupees 1,001, being principal

and interest of a debt contracted by the late Ajoodheea Pershad Ojha, agreeably to a bond dated the 31st October 1842.

Plaintiff alleges that Ajoodheea Pershad promised to refund the debt, with interest at 1 per cent. per mensem, by annual instalment of rupees 150 from 1250 to 1253 F., from the balance of revenue owing to him by the tenants of mouzah Undharree, &c., which he then held in farm.

Defendants answer that talooka Undharree was held in farm by Ajoodheea Pershad Ojha, who gave an under lease of it to the plaintiff. That the sum of rupees 1,638-0-6 being due from the tenants, Ajoodheea Pershad borrowed the sum of rupees 600 from the plaintiff, and authorised him, under a moqktarnama, dated the 1st February 1843, to realize the same, and after deducting 20 per cent. as expenses of collection, to appropriate the sum of rupees 150 annually from 1250 to 1253 F., in liquidation of the debt owing to him. That the plaintiff accordingly recovered rupees 230-14 in the years 1251, rupees 275-12 in 1252, rupees 387 in 1253, rupees 213-8 in 1254, total rupees 1,107-2, and that on an adjustment of accounts, after deducting the expenses of collection, the defendants have a surplus of rupees 73-14- $\frac{1}{2}$ to receive from the plaintiff.

The plaintiff, in his reply, denies having thus recovered any money.

The principal sudder ameen decreed this case for the full amount claimed, in the absence of Sheo Buksh Doss to verify the accounts of the collections he was stated to have written, and in consequence of there being no receipt forthcoming to establish the alleged realisation of the revenue by the plaintiff.

In appeal, it is urged that to have taken receipts would have been contrary to the engagements under which the respondent received authority to recover the balances owing to Ajoodheea Pershad, inasmuch as wasilbakees were agreed to be annually given with the signatures of the servants of either party. That Sheo Buksh Doss is in the service of the respondent, and it was impossible for the appellants to produce him; but that his signature and writing were fully recognised by other witnesses, and that the record of the case contains several receipts given in by the tenants to shew that collections had been made from them.

With regard to the receipts, I cannot find the signature of Sheo Buksh Doss on any single one that is filed; nor can the slightest credence be attached to the witnesses, who are called upon to verify them, inasmuch as the versions of two, in regard to amount, are disproved by the documents themselves, and they are all sworn to have been received from one Sheo Buksh Lall, but neither is his signature to be found thereon.

As for the wasilbakees, there are certain papers filed purporting to be such for the years 1251, 1252, and 1253 F., with a signature said to be that of Sheo Buksh Doss, the servant of the plaintiff. That for 1254 F. is not authenticated at all; this individual has never been

produced to verify these accounts, nor indeed has any effort whatever been made to secure his attendance when a *non inventus* return was made by the nazir; on the contrary, the defendants signified their wish that the case should be brought to trial on the merits of the testimony then adduced by them. This consists, as far as the wasil-bakees are primarily concerned, in the evidence of one solitary person, who swears they were signed by Sheo Buksh Lall, which statement is also disproved by the documents themselves; it is true that there are other witnesses, who declare they were present when the accounts were adjusted, but the worthless nature of their testimony is easily gathered from their incredible ubiquity.

The judgment of the lower court is confirmed, and the appeal dismissed, with costs.

THE 18TH FEBRUARY 1850.

No. 10 of 1849.

Regular Appeal from the decision of Syed Munour Ally, late first grade Principal Sudder Ameen of Shahabad, dated the 26th January 1849.

Moulvee Nehal-ooddeen Ahmud, (Defendant,) Appellant,

versus

Musst. Zahoorun, (Plaintiff,) Respondent.

THE plaintiff (respondent) preferred this action on the 2nd June 1848, for the recovery of rupees 723-14-4-7½, being principal and interest of the surplus sale proceeds of a fourth share of mouzah Bunkut, pergunnah Beheah.

The plaintiff asserts that Moulvee Nehal-ooddeen, the defendant, made over to his late wife, Musst. Wajhun, her daughter, certain landed and other property pertaining to him, and among the rest a 10 anna share of puttee Punjume, locally denominated Nujjuf Ally, in mouzah Bunkut, pergunnah Beheah, exclusive of an eighth and fortieth share therein owned respectively by Ameen-ollah and Musst. Urzanee, in liquidation of Sicca rupees 3,600 of his wife's dower, amounting to rupees 41,000 and 1 goldmohur, and executed a deed, dated the 5th March 1831, to that effect. That Musst. Wajhun kept possession, and under a bill of sale, dated the 27th January 1834, she disposed of a fifth share, i. e. 2 annas of the landed property to Musst. Ameerun; that subsequently to this Musst. Wajhun died leaving Moulvee Nehal-ooddeen, her husband, and the plaintiff and Roshun Ally, her parents, as her heirs; of whom, conformably to the Mahomedan law of inheritance, the defendant is entitled to one-half, or three shares out of six, the plaintiff to one, and Roshun Ally to two shares of her estate; but that agreeably to a

deed of agreement, executed on the 28th October 1838, it was stipulated that the defendant should continue in occupation of the entire estate of his deceased wife for the period of his life; after which the plaintiff and Roshun Ally, her husband, were to assume possession. That the defendant has caused mouzah Bunkut to be sold by with holding the Government revenue, and has realized from the collectorate rupees 1,876-3-5½, as the proportion of the sale proceeds due on the aforementioned puttee of the estate, exclusive of the shares mentioned, and that from this sum the plaintiff claims one-fourth, or rupees 469 10-7½, being the share to which she is entitled, both in her own right as well as for Roshun Ally, of whose estate, since his death, the plaintiff is in possession.

Moulvee Nihal-ooddeen, the defendant, asserts that, after the demise of Musst. Wajhun, it was settled agreeably to the deed of agreement adverted to, in addition to his own share, a moiety or 8 annas of the estate of his deceased wife should remain in his occupation for the term of his natural life, during which period the plaintiff and Roshun Ally, her husband, were not to advance a claim to any portion of it. That the plaintiff's present suit is consequently at variance with the conditions subscribed by herself; that, if the plaintiff had any interest during the defendant's lifetime, she would either have joined him, or protested against his prosecution of his coparceners in mouzah Bunkut, and that the share of the plaintiff and her husband is much less than she had stated it to be.

The principal sudder ameen decreed this case for the sum of rupees 319-2-3, being of opinion that the defendant was merely entitled by the terms of the agreement bond to appropriate during his life the produce of the landed property, which composed the estate of his late wife while it lasted; but not the sale proceeds in the event of a sale of the same.

The appellant urges that the principal sudder ameen is wrong, and that respondent is debarred by the terms of her own deed from claiming any thing pertaining to the estate of her deceased daughter, his late wife, during his lifetime: the bond containing an express prohibition to that effect.

The construction put by the principal sudder ameen upon the deed of the 28th October 1838, and upon which the whole case hinges, is, in my opinion, perfectly correct, and in entire accordance with the dictates of common sense and justice. The clause upon which the appellant relies, viz., "We (respondent and Roshun Ally) will not advance any claim against the Moulvee (appellant) during his life for our share of the lands, houses, their produce, or *any thing else*, belonging to the estate of Musst. Wajhun," will not bear the interpretation claimed for it under the altered circumstances of the estate having passed (so very questionably moreover) into other hands by public sale. To rule that because the surplus pro-

ceeds are claimed as a portion of the assets of Musst. Wajhun, *therefore* the action cannot be maintained during the appellant's existence, would be to give currency to an artful dodge, supported certainly by an isolated portion of the *letter* of the deed, but entirely opposed to the spirit of the same. This cannot be.

The judgment of the lower court therefore is confirmed, and the appeal dismissed, with costs.

ZILLAH SYLHET.

PRESENT : H. STAINFORTH, ESQ., JUDGE.

THE 1ST FEBRUARY 1850.

No. 166 of 1849.

Appeal from the decision of Baboo Chunder Kishwur Rai, Moonsiff of Hingajeah, dated 30th August 1849.

Gooroopershad Surmah *alias* Gooroodhun Surmah and others,
Appellants,

versus

Her Gobind Deb, Respondent.

RESPONDENT sued for 12 rupees, the value of a tame deer, which escaped from his house on the 1st of Sawun, and which appellants killed and eat on the 2nd idem.

Appellants' answer sets forth that a wild deer came from the jungle, and was caught by one Zakir Mahomed and his brother; that a dispute arose who should have the animal; that Gooroopershad and Sumboonath, appellants, went to settle the dispute, which ended in the animal being killed and divided by the Hindoo disputants, Gooroopershad and Sumboonath taking no part of it.

The moonsiff (Baboo Chunder Kishwur Rai) found the deer to have been a tame animal belonging to respondent, and gave him a decree for 2 rupees, with costs in proportion.

Appellants now urge that their defence is proved, not so the claim.

JUDGMENT.

I think it clearly proved that the deer was a tame animal belonging to the respondent, and that appellants were accessory to its death: and the moonsiff has, in my opinion, very properly passed decree in his favor to the extent of 2 rupees.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 1ST FEBRUARY 1850.

No. 183 of 1849.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lushkorpore, dated 22nd October 1849.

Chytun Das Muduk, Appellant,

versus

Kalachand Shah and Gour Mohun Shah, Respondents.

RESPONDENTS stated in their plaint, that appellant was in partnership with Kasheepath Shah, and subsequently with the late Bholanath Das, that articles were purchased from them on account of his (appellant's) firm, that there was a balance of rupees 149, annas 10, pies 6, due on the 25th Ughun 1253, to which Bholanath caused his signature to be affixed, by the hand of his nephew, Lochun Ram Shah : and they sued for the said sum with interest.

Appellant denied having traded either in partnership with Kasheethath or Bholanath, or on his own account, in Hubbeebgunge, &c. &c.

Lokenath Shah filed an answer, and was relieved from responsibility by the moonsiff.

Kasheethath filed an answer with the like result.

Gopeenath Shah filed an answer, but has not appealed from the decree passed against him.

The moonsiff (Baboo Ramtaruk Rai,) found that the firm was carried on on account of appellant and Bholanath, and decreed against appellant and Bholanath's heir, Gopeenath Shah.

Appellant now repeats his former pleas, in denial of his partnership, controverting the view entertained by the moonsiff of the case.

JUDGMENT.

I am fully satisfied on the grounds stated in the decree of the moonsiff, that appellant was a partner in the firm against which the present claim is brought.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 4TH FEBRUARY 1850.

No. 198 of 1849.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated 30th August 1849.

Mirza Nadir Allee, Appellant,

versus

Gooroopershad Surmah and others, Respondents.

THIS suit was remanded on the 16th December 1848; and, according to the Sudder Court's circular of the 31st August 1838,

paragraph 4, the moonsiff should have issued a proclamation for the attendance of such of the persons sued, as were not found on issue of the notice of remand. He did not do so, and I must consequently again remand the suit.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded. The stamp on the petition of appeal will be refunded, and the rest of the costs be provided for in the future decree of the moonsiff.

THE 6TH FEBRUARY 1850.

No. 10 of 1849.

Appeal from the decision of Moonshee Bishnub Churn Dass, Acting Moonsiff of Latoo, dated 29th December 1848.

Mahomed Hunneef and Mahomed Ahsun, Appellants,

versus

Mahomed Adil and others, Respondents.

RESPONDENTS sued to set aside a decision by the magistrate, under Act IV. of 1840, under which they aver themselves to have been dispossessed of 1 pao, 3 jet, 2 reg of burrundee and chara land, appertaining to their homestead in talooka Doolub Das, No. 525; stating that the said homestead was measured, in the time of Mr. collector Tucker, as plot No. 142, of the measurement roll of the talooka: and they also claimed mesne profits and their costs in the magistrate's court.

Appellants, in answer, alleged, the land to appertain to talooka Ashuk Ufzut, No. 326, their hereditary property and to be chara land (on which rice plants are raised for transplantation,) adjoining the burrundee land of their homestead; that the land in suit is included in plot No. 141, of Mr. Tucker's measurement; that there is no mention of chara land in plot 142; and that the suit has been made up, because appellant would not sell the land in suit to respondents.

The moonsiff (moonshee Bishnub Churn Das) observed, that the chittas of the parties shewed that the land in respondents' plot 142, was baree or homestead, while that in appellants' plot 141, was chara; that the papers of delivery of possession, in the suit under Act IV. of 1840, shewed that the land in litigation was burrundee land, *i. e.* that part of a homestead which is planted with trees to intercept the view; that appellants' present statement, that the land is chara land, in contradiction of their statement, and the evidence of their witnesses in the suit under Act IV. of 1840, is inadmissible; that respondents' claim to the burrundee land was fully made out; that appellants had answered after lapse of considerable time, and had failed to take the measures necessary for the adduction of their witnesses from the 13th to the 29th December: on

these and other grounds, he decreed so much of the claim as relates to the burrundee land, and the costs in the suit under Act IV. of 1840, against appellants.

Appellants now urge that, though the land was measured as chara land at the time of the halabadee measurement, it has since been converted into burrundee land; that in the plot claimed by respondents' homestead alone and not chara, is mentioned; that a local investigation would disclose the merits of the case, and that the witnesses signed the summons, but did not attend for fear of cholera, from which cause also appellants could not swear that their evidence was necessary.

JUDGMENT.

Respondents say that the land in suit is part of plot 142, of the halabadee chitta, in which kear 1, pao 2, jet 3, is comprised; appellants on the other hand, claim it as part of plot 141, which is recorded to contain pao 2, pun 2 of land: and in order to ascertain clearly to which of the parties the land really belongs, I think the plots should be measured and their boundaries compared with the chittas and a map made, shewing the land in suit and the evidence of the neighbours of the parties taken.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the purpose specified above. The price of the stamp on the petition of plaint will be returned, and the moonsiff will pass proper orders in regard to the remaining costs of appeal.

THE 6TH FEBRUARY 1850.

No. 70 of 1849.

Appeal from the decision of Baboo Sharoda Pershad Ghose, Moonsiff of Ajmeereegunge, dated 14th March 1849.

Moofeezool Hussen, Appellant,

versus

Sheik Fazil Mahomed, Respondent.

RESPONDENT stated in his plaint, that he occupied his own land 5 kears, 3 jets, tenanting, none belonging to appellant, but that the latter had caused a suit to be instituted against him under Regulation VII. of 1799, and had exacted from him rupees 5-8-2, through a piada, as rent and costs, and he sued to recover the amount exacted with penalty and costs.

Appellant filed an answer, declaring that respondent tenanted 4 kears, 2 paos, 6 jets, as per boundaries in his answer, part of plot No. 920, settled with him, appellant, and appertaining to the khanabaree seega, No. 2, of Baniachung; that he paid rent for 1251 and 1252, and contumaciously withheld the rent, rupee 1,

annas 4, pies 2, for 1253, wherefore appellant realised it with costs, in all rupees 4, annas 8, pies 2; and that, if the piada realised an additional rupee, he should have been sued.

Respondent, in his reply, declares himself purchaser of the land of the rent in suit, paying revenue to the collector.

The moonsiff (Baboo Sharoda Pershad Ghose) distrusted appellants' witnesses on account of discrepancies in their evidence: and holding it proved by the evidence of respondents' witnesses, and the enquiry of the ameen deputed by him to investigate the case locally, that respondent had tenanted no land belonging to appellant; and that the latter had, notwithstanding, extorted from him rupees 5, annas 8, pies 2, decreed that sum, with an equal amount as penalty, against appellant.

Appellant now urges, that his witnesses have proved that respondent tenants the land settled with him, appellant, and paid rent for two years; that the land of the rent in suit is surrounded by the land settled with him in occupation of other tenants, but that the ameen has not noted this circumstance in his map; that a petition, objecting to the ameen's proceedings, had been presented, but had met with no attention; that he had only been paid rupees 4, annas 8, pies 6, including costs, and if the piada took another rupee, he, appellant, knows nothing of it, that it is not the intent of the law that money realised under Regulation VII. of 1799, should be refunded with penalty; that the quantity of land declared to have been purchased by appellant does not agree with the quantity in plot 10 of the pottah granted to Wullayatee Khanum and filed by respondent; and that the boundaries of the land settled with appellant disagree with the boundaries of the said plot, whence it is clear that the land purchased by respondent is distinct from the land settled with appellant.

JUDGMENT.

It is proved that rupees 5, annas 8, pies 2, was exacted from respondent under appellants' summary suit, and it is not, in my opinion, proved that respondent, who declares himself to be proprietor of the land on account of which rent for 1253 B. S. was taken, paid appellant rent previously to that year, no written agreement to pay rent is asserted to have been executed; the evidence of the two witnesses adduced before the moonsiff is discrepant and unsatisfactory, and the result of the local enquiry *quoad* the previous payment of rent, which appears to me to be consistent with probability and worthy of reliance, is against appellant. Under these circumstances, I see no reason to interfere with the decree of the moonsiff.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 6TH FEBRUARY 1850.

No. 179 of 1849.

Appeal from the decision of Baboo Ramitaruk Rai, Mooniff of Lushkerpore, dated 28th January 1849.

Syud Torun Allee, Appellant,

versus

Wullee Mahomed, Lal Mahomed, Jumeest Oollah, Syud Asud and Umjud Oollah, Respondents.

THE plaint sets forth that respondents did not jointly occupy and tenant land settled with the defendants, in pergunnah Gudda Hussun Nugger: that Wullee Mahomed, Lal Mahomed, and Jumeest Oollah, respondents, are hereditary proprietors and possessors of land in mouzah Adeeargabhee, muddud maash in the name of Syud Joomun in pergunnah Turruf: that, notwithstanding this, the defendants had caused the land to be measured and settled with them as muddud maash in the name of Shah Gudda Hussun, No. 2 of pergunnah Gudda Hussun Nugger, had attached their property under plea of their not paying 48 rupees 4 annas, rent for the said land on account of the year 1253 B. S., and thereby compelled respondents to pay to the commissioner of distraint rupees 53, 1 anna, for the return of which they petitioned without success, the deputy collector rejecting their claim on 20th April 1848, because the land had been settled with defendants: that they had appealed against the settlement to the collector: that the defendants' answer, in the summary suit for replevin, shewed that respondents were not joint tenants, though they had been so sued: and that defendants never received rent from respondents previously to 1253 B. S. And they now sue for 72 rupees, 10 annas, 10 pie, i. e. for 53 rupees, 1 anna paid to the commissioner, with interest and costs in the summary proceedings, with interest, &c.

Jygodind Dut filed an answer pleading non-liability, as having merely acted as gomastah, and as not having partaken of the sum realised, &c.

Appellant answered pleading that 2 k. 1 c. 1 p. 4 j. 10 p. of land, bounded as specified at the foot of their answer, had been settled with them under a pottah, No. 155; that respondents have long tenanted it and paid rent for it to appellant, &c.; that the rent for 1253 B. S. was realised under the provisions of Regulation V. of 1812; that, if the commissioner realised more than 48 rupees, 4 annas, he ought to have been sued; that respondents do not occupy seega land in the name of Syud Joomun in pergunnah Turruf, but seega land in the name of Shah Gudda Hussun No. 919 of pergunnah Gudda Hussun Nugger; that respondents were formerly pointed out by Mehar Oodeen, appellant's brother, and paid rent to the putwaree, under the collector's order, taking a receipt as from appellant, &c., signed by the putwaree; that in 1253, 1254 and

1255 they similarly paid rent to the putwāree; that he, appellant, realised the balance of rent for 1253, *i. e.* 48 rupees, 4 annas; that respondents have not sued for the rent taken by the putwāree, but only for that realised by appellant; that respondents were not sued jointly, but separately under a specification of balances; that respondents' pleas were rejected, a decree of resumption passed in favor of Government, and the land settled with appellant, &c.; that he pays revenue from 1256, the year of the decree; and that the summary exaction is legal.

Respondents noticed, in their reply, that the settlement made by the deputy collector had been reversed by the collector, on the 16th of December 1848, all the plots claimed by respondents, with the exception of plots 26, 30 and 31, having been declared to appertain to the tenure in the name of Syud Joomun; and that plot 36, had been settled with them.

The moonsiff (Baboo Ramtaruk Rai) observed, that the deputy collector's settlement had been reversed by the collector; and not being satisfied that appellant had received rent for the land prior to 1253 B. S., he reversed the summary decree, and ordered that respondents should recover from appellant and Meher Oodeen, his brother, the 48 rupees 4 annas received by appellant, &c., with interest to the date of the decree, and the costs in the summary proceedings and in this suit, in proportion to the amount decreed, with interest, on the whole amount decreed to the date of realisation, releasing the other persons, and saddling the defendants with their own costs.

Appellant now urges that he has appealed from the order of the collector to the special commissioner; and that notice of appeal has been served on the parties, so that the collector's order should not rule the decision in this case; and that his defence is fully made out by the evidence adduced by him.

JUDGMENT.

I have but one point to consider, which is, whether appellant received from respondents such rent as that which he realised under Regulation V. of 1812, on account of 1253 B. S., previously to that year.

Respondents deny such payment and liability to make it: no agreement to pay is averred to have been executed: and proof of the plea of payment, if it exist any where, must be found in the evidence of the witnesses.

In the summary suit for the restoration of the money lodged by respondents, appellant adduced four witnesses, and he has brought forward four more in this suit. The evidence of two of the former is altogether hearsay as regards former years, and, as regards the year of the rent in suit, they have stated that respondents, when asked to pay by appellant's gomastah, promised to do so, a statement which, with reference to respondents' claim and acts, is extremely

doubtful. The other two witnesses in the summary suit have likewise given very unsatisfactory evidence, one of them declaring that 48 rupees, 8 annas, and the other that 48 rupees, 4 annas, was the rent of the land, whereas appellant's answer shews that 48 rupees, 4 annas was merely the balance of the rent for 1253, which sum had been realised by the putwaree. The evidence of three of the witnesses before the moonsiff is hearsay: the fourth has stated that he saw payments made, but when and how much he cannot remember.

On the whole then I have no hesitation in coming to the conclusion, that appellant has not justified his act of realisation of money under Regulation V. of 1812, and that, consequently, the decree of the moonsiff is correct.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 8TH FEBRUARY 1850.

No. 75 of 1849.

Appeal from the decision of Baboo Sharoda Pershad Ghose, Moonsiff of Ajmeereegunge, dated 10th March 1849.

Rajkishwur Das and others, Appellants,

versus

Sheik Inaytoolah, Respondent.

RESPONDENT sued for 1 rupee, 8 annas, *i. e.* 8 annas *plus* twice the amount as penalty, stating that he tenants only 2 kears of land from appellant, in mouzah Khatooar of talooka Asad Oolla Reza, No. 4, having in cultivation 2 kears of his own, deoter in the name of Unoop Ram Ghose in mouzah Moradpore, under a pottah, (from the collector;) and that, notwithstanding this, appellants declared him in balance to the amount of 1 rupee for 4 kears of land on account of 1253, instead of 8 annas for 2 kears, realising the former sum.

Appellants filed an answer setting forth that respondent tenants 4 kears of their land in mouzah Khatooar, paying rent yearly; that he withheld it for 1253, wherefore it was realised according to the law; that respondent formerly sued Sheik Asan, &c., then tenants, under Regulation VII. of 1799, with mention of mouzah Moradpore, kitta Khatooar, when his statement was disbelieved, and a decree passed, recognising their right and possession of mouzah Khatooar pertaining to talooka No. 4, which decree, not having been set aside, has become final, &c. &c.

The moonsiff (Baboo Sharoda Pershad Ghose) held it proved that respondent only tenanted 2 kears of appellant's land, and decreed that he should recover from them 1 rupee, with costs in proportion to the amount decreed and interest.

Appellants now urge that the land is proved to be their property and possession in talooka No. 4, &c.

JUDGMENT.

The sole question for me to consider is, whether appellants received from respondent in prior years the rent exacted in 1253, for 4 kears of land, and there is not only no proof that they did so, but there is strong reason to suppose that they did not, for, in their answer, they cite a previous case, in which respondent declared himself a proprietor, and it is not likely that he would, though the case is said to have gone against him, acquiesce in the condition of a tenant, and again rise in dispute of appellant's claim to rent for the 2 kears disputed. Under these circumstances I see no reason to interfere with the moonsiff's decree.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 8TH FEBRUARY 1850.

No. 110 of 1849.

Appeal from the decision of Mahomed Moazum, Moonsiff of Latoo, dated 25th May 1849.

Mahomed Kasim, Appellant,

versus

Mahomed Basir and Mahomed Uzeem, Respondents.

APPELLANT sued Mahomed Basir as principal, and Mahomed Uzeem as security, under a bond, for 42 rupees 8 annas, dated 10th Bysakh 1255, for 42 rupees 8 annas, the balance of the price of planks, noticing that a complaint, that the bond had been extorted on the 28th Sawun, had been dismissed by the kazee and, in appeal, by the magistrate.

Mahomed Basir filed an answer, alleging that he had bought, in Asar 1255, 3 paos of land from Mahomed Hazim, appellant's brother-in-law; and that, because he would not sell the land to appellant, the latter seized him, took away 50 rupees which he had with him, confined him for four days, because he would neither execute a deed of sale of the land nor sign the bond in suit, and released him on the fifth day, on hearing that information had been given at the thanah; and he added that he and one Mahomed Sadir had bought some logs from appellant on the 5th Aughun 1254, which have been paid for in cash,—with other matter.

Appellant noticed, in his reply, that Mahomed Basir had denied the transaction in planks in the criminal court, and had admitted the purchase of 20 rupees' worth of logs in his answer before the moonsiff.

The moonsiff (Moonshee Mahomed Moazum) distrusted appellant's witnesses: and, on this and other grounds detailed in his decree, dismissed the claim.

Appellant now urges that Basir Mahomed's witnesses are under his influence, and that his (appellant's) claim is established, &c.

JUDGMENT.

It does not appear to me necessary to follow the moonsiff's example, of considering whether all the circumstances stated in the defence, some of which are very improbable, are all proved. I shall merely consider whether the bond is proved to have been voluntarily executed by respondent. There are discrepancies in the evidence of appellant's witnesses, who came into court without being summoned, which seem to me destructive of reliance on them. The security, Mahomed Uzeem, who is declared to be a witness by profession, a list of no less than fifteen cases in which he has given evidence being filed in the answer to the grounds of appeal, has not come forward to defend the case. Appellant states that he has refrained from coming forward because the claim is just, but it seems to me that he is much more likely to have done so from a less virtuous motive, i. e. collusion with appellant; first, because the writing, by which he is bound as security in the bond is suspicious, having the appearance of having been added from after-thought, subsequently to execution of the bond; secondly, because desire to avoid having a decree passed against him, and desire to ward off a decree from a person towards whom he had been so friendly as to become security for him, would apparently have operated to cause his appearance, had he not been in collusion with appellant. Moreover, the nature of the deed is otherwise suspicious? Appellant's witnesses, Tiluk Ram and Neel Chunder, say that the bond was written on account of an old balance. Had it been executed when the sale of timber took place, the requiring and giving security for such balance, as could not be paid in cash, would have been a transaction, such as occurs continually, but the subsequent giving of security, which is never found readily, without some compulsion, and indeed the execution of the bond itself voluntarily, are circumstances of very questionable reality. On the whole I am not satisfied that the bond in suit was voluntarily executed by Mahomed Basir. I believe it, on the contrary, to have been extorted.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 9TH FEBRUARY 1850.

No. 128 of 1849.

Appeal from the decision of Moonshee Nuzeroodeen Mahomed, Moonsiff of Parkool, dated 13th June 1849.

Beshember Das, Appellant,

versus

Nursing Das, Respondent.

RESPONDENT sued for 10 rupees principal, and rupees 34, annas 6, pie 3, krant 19, interest, due on a bond dated 9th Kartick 1246, and originally for 70 rupees, but on which 60 rupees had at various times been paid.

Appellant filed an answer, alleging that the bond was for 70 rupees, found to be due from him, as respondent's gomashtah, on a settlement of accounts; that it was stipulated that interest should not be taken; that the whole amount of the principal has been paid, the sum of 10 rupees not credited by respondent, having been received by him in several small and on several dates, from the dookan of Muddun Mohun Das, whose gomashtah appellant now is; that the bond was withheld by respondent, on the ground that he would ascertain the payments from Muddun Mohun's books; and that the suit is now preferred in consequence of a dispute about land.

Respondent noticed, in his reply, that the money represented in the bond was the balance due from appellant as his gomashtah; and that it was agreed that no interest should be taken, provided the bond were liquidated when due, *i. e.* in a month, but that this was not done.

The moonsiff (Moonshee Nuzeroodeen Mahomed) observed that it was stipulated in the bond, that payments in liquidation should be endorsed; that 60 rupees were so endorsed; that from the evidence of Muddun Mohun himself, who was named as a witness by the parties, and that of Hoolas Ram, a witness named by appellant, it was clear that 10 rupees of the principal were still due, and that interest from the time the bond fell due was legally due, and due also in accordance with custom, and he finally decreed 10 rupees principal, and the interest which had accrued against appellant.

Appellant urges that 10 rupees has not been credited; that Hoolas Ram is respondent's gomashtah; and that the evidence regarding the practice of taking interest when not stipulated was objected to by him.

JUDGMENT.

It is stipulated in the bond that payments in liquidation shall be endorsed, and I am not satisfied that more has been paid than is endorsed. Appellant avers that 10 rupees, paid by Muddun Mohun,

have not been credited, but the chief support of this statement is that Muddun Mohun's account book shews that 10 of the 20 rupees paid by that individual were not credited by respondent on the dates on which they were paid. This support, however, appears to me unavailing, as Muddun Mohun's account book only exhibits 20 rupees as having been paid by him, and that amount has been credited: and as the bond was not paid when it fell due, the moonsiff has, in my opinion, properly held appellant liable to pay interest.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be affirmed, and the appeal dismissed, with costs.

THE 9TH FEBRUARY 1850.

No. 164 of 1849.

Appeal from the decision of Moulvee Mahomed Salim, Moonsiff of Sonamgunge, dated 14th August 1849.

Joogul Ram Das, Appellant,

versus

Gooroo Pershad Surmah, seller, Sheo Pershad Surmah and another, purchasers, Respondents.

RESPONDENTS sued Khoosal Ram Das and others, in order that the respondent, purchaser, might be put in possession of 26 koolbas 10 kears of land in talooka Assadool Reza, No. 4, and receive the mesne profits.

Khoosal Ram filed an answer, alleging the land to be part and parcel of his talooka Adum Reza, No. 1.

Appellant filed a petition, averring tenure of the land under a document termed a "cheet."

The moonsiff (Moulvee Mahomed Salim) decreed possession of the land, providing that the amount due as mesne profits should be ascertained in execution of the decree, and pronouncing appellant's claim untrue.

Appellant now urges that he and his ancestors have held possession of the land under the cheet tenure at a fixed rent, which he is ready to pay to the auction purchaser.

JUDGMENT.

Appellant having neither been sued or required to furnish proof of his claim, cannot be affected by the moonsiff's decree.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 9TH FEBRUARY 1850.

No. 182 of 1849.

Appeal from the decision of Moonshee Nuzeerooddeen Mahomed, Moonsiff of Parkool, dated 22nd October 1849.

Ram Das, Appellant,

versus

Suleem Oollah and Sheik Hingun, Respondents.

APPELLANT stated, in his plaint, that he lent respondent for two months, 20 rupees, from the 9th Assin 1252, on mortgage of a pair of bracelets (kurra,) weighing 2 tolas, 5 annas, pledged as gold, but which appellant discovered to be silver gilt, in Kartik 1254 B. S.: and he stated that he found Suleem Oollah, on the 18th Assin, and shewed him the bracelets, which he admitted pledging, whereupon he (appellant) complained to the magistrate, who referred him to the civil court, from which he now seeks the amount advanced with costs and interest, praying that the bracelets may be returned, and adding that he will hereafter sue on account of another pair of bracelets of counterfeit gold, also mortgaged to him on other dates.

Respondent stated, in his answer, that he and Hingun never mortgaged bracelets weighing 2 tolas 5 annas to appellant, but that, on the date declared, he alone pledged a golden nose-ring with its paraphernalia, weighing 12 annas, with a golden ornament named a batana, weighing 1 tola 4 annas, and two bracelets (kurra,) weighing 1 tola 12 annas, together weighing 4 tolas 12 annas, in the Sylhet bazaar, appellant weighing and testing all the articles, saving the nose-rings, at the shop of Gour Sonar; that he (respondent) borrowed on them 40 rupees for three months, agreeing to pay interest at the rate of 2 rupees 8 annas per cent. per mensem; that he took the original amount of the loan with legal interest, and tendered it to appellant, who refused to take it without more interest, and would not return the ornaments, wherefore he (respondent) was about to sue, when appellant shewed him two pairs of choories and a pair of kurras of counterfeit gold, and asked whether those were the things which he had mortgaged to him, a question which he (respondent) answered in the negative, and that appellant's object is to defraud him of his property.

Appellant stated, in his reply, that the ornaments mentioned in his plaint had been pledged on three separate dates, and that Gour Sonar had been dead five or six years.

The moonsiff (Moonshee Nuzeerooddeen Mahomed) observed, in his decree, that appellant had stated, in his complaint to the magistrate, that Suleem Oollah alone pledged the bracelets, while his plaint in this suit sets forth that they were pledged by both Suleem Oollah and Hingun, and the letter connecting the two names in the account book had been altered from *منعوت* (معرفت) or *through*, signify-

ing that Hingun had pledged the things *through* Suleem Oollah to ¶ , intended to stand as a sign of conjunction. He further noticed other alterations, inducing belief in the defence, and disbelief in appellant's statement: and, after commenting on the evidence of the witnesses adduced by appellant to identify the bracelets brought into court as those which were pledged, as unsatisfactory; and, after noticing the impossibility of gilt bracelets disclosing the metal below the gold from mere keeping and without having been rubbed, and the fact that the four witnesses, brought by appellant to prove that Suleem Oollah had admitted the bracelets shewn to him to be the things pledged, had proved nothing of the kind, stating, in contradiction of appellant, that Suleem Oollah's answer was, that the bracelets did not belong to him, but to Hingun, who could say whether they were those which were pledged, he held it impossible to rely on appellant's statement and dismissed the claim.

Appellant now complains that his claim to the money, which Suleem Oollah had admitted to have been advanced to him, had been dismissed; that the property pledged was $4\frac{1}{2}$ tolas of gold, while 2 or $2\frac{1}{2}$ tolas were ample to cover a loan of 38 rupees, and from this he would have me infer that Suleem Oollah must have been conscious that the bracelets were not gold; that errors in a case before the magistrate, whose court is of summary jurisdiction, are open to correction in a civil suit, and that a copy of the account, as in the book, was given to the pledger at the time of the pledge,—with other immaterial matter.

JUDGMENT.

It is possible and not improbable that gilt articles have been pawned with appellant as gold, but, in my opinion, it is not satisfactorily proved that the articles produced are those which were pledged, and therefore the prayer of appellant's plaint, that the articles pledged be returned, and his money realised, cannot be carried out.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs; and that the bracelets be returned to appellant.

THE 13TH FEBRUARY 1850.

No. 89 of 1849.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Lushkerpore, dated 17th April 1849.

Oochubram Pal, Appellant,

versus

Sheik Neym Oolla and Sheik Unsur, Respondents.

APPELLANT sued under a bond for 50 rupees with interest, dated 12th Chyt 1251 B. S.

Respondents denied the loan and bond, and pleaded that the suit was founded on enmity, which had led to cases in the magistrate's court. Sheik Unsur also pleading *akibi*, and ability to write Bengalee from his childhood: and that he had never, on any occasion, caused another to sign for him.

Appellant denied the existence of enmity between himself and respondents, and the occurrence of any case between them in the magistrate's court, and asserted that Sheik Unsur was able to write Bengalee with other irrelevant matter.

The moonsiff (Baboo Ramtaruk Rai) observed in his decree, that the evidence of the three subscribing witnesses to the bond appeared tutored and unworthy of reliance, inasmuch as they had, in the first instance, concealed the fact of their connection with appellant, while, on the other hand, five witnesses had deposed to the enmity asserted by respondent, which indeed was, in some measure, shewn by the evidence of Sheik Joomun and Jugurnath Pal, appellant's own witnesses; and that, under these circumstances, the loan was improbable, and the suit appeared to have originated in enmity. He further observed that Sheik Unsur had written some papers in the court, and that, had he executed the bond, he would have signed it; that though appellant was not recorded as one of the parties to either of two cases received from the magistrate's court, Sheik Unsur had filed a petition in one of them (No. 1631,) declaring it to have been preferred at the instance of appellant, who was compelled to enter into recognizances filed with the other, No. 1633; that the said cases originated in Phalgun 1251, shewing enmity between the parties previously to the date of the bond; and that, under such circumstances, the loan was impossible. He also observed that, though appellant had asserted that Sheik Unsur had been a servant in his zemindaree, and had signed all the papers rendered by him, and, among them, a kubooleut in favor of Pagul Ram Shah, which was produced by the hands of other persons, still Sheik Unsur had filed in the above mentioned case, No. 1631, a petition complaining violently of appellant and Pagul Ram, &c., and that the kubooleut therefore was not trustworthy, and on these grounds he dismissed the suit.

Appellant now urges that he had nothing to do with the criminal cases above cited, which were nowise beneficiary to him; that Sheik Unsur, whose name is signed in many papers by other persons, appeared to have learnt to write Bengalee in order to defeat the present claim; that he (appellant) had filed a surberakaree kubooleut of a mehal in favor of Pagul Ram, signed by the said respondent, through another person, but that the moonsiff had distrusted it, and that the loan had been granted because respondents were his servant and tenants.

JUDGMENT.

I am not satisfied, under the circumstances stated in the decree of the moonsiff, that the bond in suit represents a real transaction.

IT IS THEREFORE ORDERED,
That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 14TH FEBRUARY 1850.

No. 51 of 1849.

Appeal from the decision of Baboo Chunder Kishwur Rai, Moonsiff of Hingajeeah, dated 13th February 1849.

Gorepershad, seller, and Deepchunder Ghose, purchaser, Appellants,
versus

Kishunpershad Deb, Respondent.

APPELLANTS sued for 50 rupees with interest. They stated that respondent, maternal cousin of Gorepershad, agreed to sell the latter 1 koolba of homestead, for 72 rupees; and that he received 50 rupees, as part of the price, on the 15th Aughun 1252, but would not afterwards receive the balance and grant a deed of sale, or repay what he had received: and appellants prayed that the claim might be decreed, with costs, in favor of Deepchunder Ghose, who had purchased the claim from his co-appellant.

Respondent denied the asserted transaction, and pleaded that, had it been true, specification of the talooka or lakhiraj tenement to which the land belonged, of the number of its parcels, of the persons before whom the money had been paid, of the period fixed for completing the purchase, would have been given; that appellant and others formerly sued Gooroopershad Chowdree and others, in suits No. 227 and 228, when Gorepershad pleaded that the land litigated in those suits was the property of respondent, bought by him from the father of Gorepershad (appellant,) producing documents in support of his plea; that Gorepershad came to his (respondent's) house, under apprehension of being worsted in those cases, on the date mentioned, and bought the land for 40 rupees; that perusal of suit 228, decided on the 19th March 1846, would disclose Gorepershad's fraud; and that Deepchunder, purchaser in the said suits, had been joined with him as plaintiff and purchaser in this also that he might not be witness.

Appellants urged, in their reply, that respondent had no right or interest in the land connected with suits Nos. 227 and 228, that a deed of sale should have been taken from him, &c. &c.

Respondent stated, in his rejoinder, that he had but 1 koolba of khabaree land, and was not in need that he should wish to sell it; that the kubalah, taken from him, was taken on account of suit No. 228, but that the suit was decided in the plaintiff's favor before the kubalah was filed; and that this suit had been instituted, because the money paid under the kubalah was held to have been paid uselessly, with 10 rupees added to the claim.

The moonsiff (Baboo Chunder Kishwur Rai) observed, in his decree, that it is improbable that Gorepershad would pay the 50 rupees without taking a receipt for them: and, holding the defence proved, he dismissed the claim.

Appellants now urge that the former suits are unconnected with this; that respondent was not owner of the land in those suits, in which there is no mention of the asserted purchase for 40 rupees; that respondent had not stated who subscribed as witnesses to the kubalah; that the moonsiff had rejected his proved claim, relying on witnesses under influence of respondent; that as respondent was his relative, there was no necessity for a receipt for the money paid, that the two vaqueels, who have given evidence in the case, are friends of respondent,—with other immaterial matter.

JUDGMENT.

Appellant's claim does not appear to me a true one. Gorepershad alleges that he paid 50 out of 72 rupees, for which Kishunpershad promised to sell him a koolba of homestead. He took no receipt for the money, because, he says, he trusted Kishunpershad his relative, and he has given no boundaries of the land for which 72 rupees were agreed to be paid, because, say his vaqueels, no particular piece of land was selected, a reason which renders the claim even more improbable than the omission of the boundaries does.

To me the defence seems a much more probable story. It is that the only payment made by appellant to respondent was one of 40 rupees for a kubalah of some land, which had been awarded to the latter, who had claimed it when attached in execution of a decree against Gungapershad, Gorepershad's father, under a deed of purchase (not said to be benamee) from that individual, the said sum being paid to secure Gorepershad from any claim by Kishunpershad in the suit instituted to reverse a settlement of some khanabaree land, which appears to me, from its quantity and other circumstances, identical with the land rescued from sale by Kishunpershad. And this view of the case is supported by oral evidence far stronger than that adduced by appellant, which indeed, from the coincidences which it discloses on minute points, where no coincidence would be expected, appears to me tutored.

Not then being satisfied that appellant's statement is true, and indeed believing it false, I have only to affirm the decree passed by the moonsiff.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 14TH FEBRUARY 1850.

No. 173 of 1849.

Appeal from the decision of Moonshee Mahomed Moazum, Moonsiff of Latoo, dated 6th September 1849.

Joogulkishwur Dut, Appellant,

versus

Mahomed Sullim and others, Respondents.

RESPONDENTS sued for the reversal of a summary decree under Regulation VII. 1799, and to recover, with costs, but without interest as they are Mahomedans, the money paid under it as rent, for 1254 B. S. of 8 kears, 2 pao, 2 jet of land, in mouzah Malleebund of the khas talooka Kabit Rujoo, No. 632, settled with appellants, but which land respondents aver to be part and parcel of the burmoter land in the talooka, bearing the names of Sheeb Ram Pundit and Oneeram Pundit: and they added that a review of the order of settlement of the land by the collector had been directed by the commissioner of revenue.

Appellant answered, alleging the land of the rent in suit to be situated in talooka Kabit Rujoo, settled with him for five years from the commencement of 1254; that the collector's putwaree put him in possession of mouzah Maleebund and other mouzahs appertaining to the talooka, that respondents are named as tenants in the putwaree's minutes (sooruthal) of the transfer of possession, and that, as they did not pay, appellant realised the rent under Regulation VII. 1799, &c.

The moonsiff (Moonshee Mahomed Moazum) decreed the claim, because the putwaree's chitta, filed by appellant, did not exhibit the names of the tenants of the talooka; because appellant, who obtained possession in Poos 1254, could not be entitled to the rent of the whole year: because appellant had not filed a receipt by the collector shewing that he had paid revenue for 1254; because the two witnesses, adduced by appellant in the summary suit, were unable to say to whom respondents paid rent in 1252 and 1253; because the three witnesses, adduced by respondents, had substantiated respondents' claim; and because the settlement with appellant was under review by order of the commissioner,—with other immaterial matter.

Appellant now urges that respondents admit occupation of the land in suit, that the land is his, and that he is entitled to the whole year's rent, having received a lease from the collector from the commencement of 1254, &c. &c.

JUDGMENT.

The sole question for decision in this case is, whether the collector, the lessor to appellant, realised from respondents, previously to 1254, the rent which was decreed summarily for that year in appellant's favor. Appellant should clearly have opportunity for proving

such realisation, but has not been required by the moonsiff to produce his proof of it. Under these circumstances the suit must be remanded.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the purpose indicated above. The price of the stamp on the petition of appeal will be refunded, and the moonsiff will pass orders in regard to the remaining costs of this appeal.

THE 15TH FEBRUARY 1850.

No. 177 of 1847.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russool-gunge, dated 22nd August 1849.

Huzaree Meerda, Appellant,

versus

Hubya Meerda, Respondent.

APPELLANT sued for 8 rupees 8 annas, with interest, the balance of 26 rupees 4 annas, the price of fish oil, sold to respondent on the 1st Assin 1254, with promise to pay in the following Bhadoon, and of which 17 rupees 12 annas was paid on the 15th of Chytc.

Respondent resisted the claim, and pleaded *alibi*, going from home on the 5th Jyte 1254, and returning on the 25th Sawun, and again leaving and returning in Kartik; that such a large sum would not have been left due without a bond; and that there was enmity between them on account of a dispute about 3 annas' worth of string.

The moonsiff (Baboo Hergouree Bose) dismissed the suit, in the absence of documentary evidence, on account of discrepancies in the evidence of the witnesses.

Appellant now urges that his claim is proved by the evidence of the witnesses produced by him before the moonsiff, and those examined by the ameen; that fishmongers do not keep account books; that there is no enmity on which a false suit could have been founded, &c. &c.

JUDGMENT.

The claim is a very trifling one, not such that a dealer in fish oil would be likely to prefer without ground; no good ground for a false suit is assigned; the asserted dispute about the price of 3 annas' worth of string, and the *alibi*, are not proved; and of the discrepancies noticed by the moonsiff one is imaginary. Alum Meerda and Khuleel not having, as supposed by the moonsiff, been named as witnesses to the sale of the oil, while the rest do not appear to me such as should throw discredit on the evidence. Under these circumstances,

IT IS ORDERED,

That the decree of the moonsiff be reversed, and the claim decreed, with costs, and interest to the date of realisation.

THE 15TH FEBRUARY 1850.

No. 186 of 1849.

Appeal from the decision of Moonshee Nuzerooddeen Mahomed, Moonsiff of Parkool, dated 22nd October 1849.

Nuzzer Mahomed and others, Appellants,

versus

Omede Alee and others, heirs of Waris Mahomed, Respondents.

WARIS MAHOMED, inheritee of respondents, who was formerly nonsuited, again sued, stating that a deed of sale of part of talooka Sheik Mahomed, his property, was drawn out in favor of appellants and others, on the 19th Aughun 1245, but that the price was not paid, because Omede Alee, plaintiff's son, had not signed it; that it was deposited with Mahomed Zukee, plaintiff's nephew, till Omede Alee's signature should be affixed; that Omede Alee demurred to admitting appellants as partner in the talooka and signing the deed, which was, in consequence, taken back from Mahomed Zukee, but was subsequently abstracted from his house by that person, who caused the name of his ryut, Mana Oollah, to be added as a witness to it, with whose aid and that of a person who personated Mogulooddeen, another of the subscribing witnesses, the document was fraudulently registered; and that the matter was brought before the police, magistrate and sessions judge, the last of whom decided, in opposition to the magistrate, that the matter ought to go through the ordeal of a civil enquiry, before it was made the subject of criminal investigation: and he prayed that the kubalah might be declared null and void.

Appellants and others answered, alleging the sale to have been completed in every respect, the prices having been paid and possession received; that they caused the kubalah to be registered, and paid the revenue of Government; that plaintiff had gained over the subscribing witnesses, and preferred a false charge at the thannah and in the criminal court, but it had been thrown out by the sessions judge; that some of the purchasers have disposed of their shares to other persons: and that there was no need of the signature of plaintiff's son, who was a minor at the time, and who had no property in the talooka, his father surviving.

Respondent urged, in reply, that his son was nineteen or twenty years of age at the time of the transaction; and that the kubalah was deposited with Mahomed Zukee at the request of Mahomed Zukee and Nuzzer Mahomed, &c.

The moonsiff (Moonshee Nuzerooddeen Mahomed) held payment of consideration for the land in the kubalah unproved, and

moreover held non-payment of it, and return of the deed to respondent, proved. He observed that appellants had, by some means or other, clandestinely obtained possession of the kubalah, and caused it to be illegally and fraudulently registered, one Mana Oolla (whose name had been subsequently added as a witness to the deed) standing sponsor for it before the register of deeds, with some other man who personated Mogulooddeen, one of the subscribing witnesses: and he further noticed that appellants' possession of the property in the kubalah, which would have had a strong tendency to induce belief in the completion of the purchase, was not established, and was indeed disproved: and on these grounds he decreed the claim, with costs.

Appellants now urge that the deposit and return of the deed are not proved; that it is incredible that it should have been left with one of the purchasers pending the signature of the seller's son, which was unnecessary: that Zakir Mahomed, one of the five subscribing witnesses to the kubalah, is plaintiff's cousin, and a purchaser of two-sixteenths of the talooka, while Sona Oolla, another of them, is plaintiff's brother-in-law, and Mogulooddeen and Gourgobind were influenced by Tarachand Chowdry, the latter being his relation, and Tarachand having, as stated in the reply, purchased part of the talooka; that, notwithstanding this, Mana Oolla and others have proved that plaintiff acknowledged receipt of the price of the land: and they pray for a local investigation.

JUDGMENT.

The kubalah was executed in 1245, *i. e.* about eleven years ago, and I think that the question, whether the sale was completed or not, may be tested unerringly by ascertaining which party has been in possession. The possession which the kubalah would authorize is joint possession of the purchasers with respondents' inheritee, in all the land of the talooka not previously alienated by him, but no such possession of the purchaser is established; on the contrary, entire possession of respondents in three out of the four mouzahs of the talooka is proved by appellants' own witnesses, and all that appellants are shewn to have done consists in recently taking kubooleuts from three ryuts in mouzah Goureepoor. Appellants then have not obtained possession jointly with respondents on the four mouzahs of the talooka. They have suffered eleven years to elapse without preferring any suit to effect such possession; and the inference which I draw is, that they have advanced no claim because they have no right; that, in fact, the sale was never completed. Under these circumstances, I see no reason to interfere with the decision of the moonsiff.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 16TH FEBRUARY 1850.

No. 145 of 1849.

*Appeal from the decision of Moulvee Mahomed Salim, Moonsiff of Sonam-
gunge, dated 7th July 1849.*Nundlal Deb, Oomakant Deb, Kuntanarain Deb, and Moolook
Chand Deb, Appellants,*versus*

Urnopoorna Dasee, widow of Kylannarain Chowdree, Respondent.

RESPONDENT, widow of appellant's uncle, sued for rupees 288, 15 annas, 4 pie, alimony for eleven years, two months, eleven days, to the date of suit, at 1 anna per diem for food, and 3 rupees per annum for clothing, and for an order for alimony at the same rate thereafter. She formerly sued for her husband's share of the undivided family estates, but her suit was dismissed on appellants' plea that she had only claim to alimony.

Appellants resisted the claim, answering that the talookas were hereditary and purchased property, in which neither respondent nor her husband have had any share; that respondent disagreed with her husband, and left his house to live with her father and brother; that she returned to perform her husband's obsequies, and again went back to her father's house; and that the suit is barred by the law of limitation, with other immaterial matter.

Respondent stated, in her reply, that she lived with her husband up to the time of his death, occasionally visiting her father.

The moonsiff (Moulvee Mahomed Salim) held respondent entitled to the alimony, as the widow of the uncle of appellants, who exclude her from all share in the undivided estates of the family; and he decreed that respondent should receive the amount claimed, with costs and interest.

Appellants now urge that the evidence of their witnesses in the former suit proved that they were the owners and possessors of the land; that respondent was shewn not to have been in possession within twelve years; that her claim was consequently dismissed without any appeal being preferred; that she cannot now, after lapse of more than twelve years, bring forward a claim to alimony; that respondent, a childless widow, living with her father, is not entitled, according to the bewusta filed, to alimony; 12 rupees, 2 annas, 2 pie is the amount of the jumma of the talooka mentioned by respondent; that the rent amounts to 50 or 60 rupees yearly; and that respondent's claim to 25 rupees 13 annas, as $\frac{1}{3}$ th of the rent, is excessive, &c.

JUDGMENT.

Appellants have excluded respondent from possession of her husband's share of the family estates. She was messing with them within twelve years previously to the date of suit, and her title to

maintenance, recognized by the bewusta, was not, according to it, injured from her living subsequently with her father, and no disqualification is proved against her. The amount allowed, 1 anna per diem for food, and 3 rupees per annum for clothing, is sworn, with all appearance of truth, not to be an excessive allowance, and I see no reason for interference with the moonsiff's decree, though appellants' vagueels state that respondent is dead.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 20TH FEBRUARY 1850.

No. 184 of 1849.

Appeal from the decision of Baboo Sharodapershad, Moonsiff of Ajmeere-gunge, dated 24th October 1849.

Urjunnath, Appellant,

Budulnath and another, Respondents.

RESPONDENTS sued for rupees 62, damages, because appellant had applied to them in term of reproach, which, according to their interpretation, means a bastard.

Appellant referred to his answer in the former suit, in which respondent was nonsuited, shewing that the term applied, batooa, means the son of a woman second time married, as is customary among the jogees; and that the matter was arbitrated by Gireedhur Chowdry, who dismissed respondents' claim.

Respondent, in his reply in the former suit, denied arbitration by Gireedhur Chowdry.

The moonsiff (Baboo Sharodapershad) has made a reference, in his decree, to Clause 3, Section 50, Regulation XXIII. of 1814, the connection of which with the present suit is unintelligible, and has decreed rupees 30 damages.

Appellant now urges that the term batooa is not abusive, that Gireedhur dismissed respondents' complaint; and that the damages awarded are excessive.

JUDGMENT.

If the term batooa, of which respondent complains, had not been one of reproach, it would not have been used, and there is no proof that Gireedhur Chowdry settled the case by arbitration, but I think that the damages awarded by the moonsiff are excessive, and that they should be reduced to rupees 5, the parties paying their own costs.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be amended by the amount of damages being reduced to rupees 5, with interest from the date of the moonsiff's decree to the date of realization, the parties defraying their own costs.

THE 20TH FEBRUARY 1850.

No. 201 of 1848.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russool-gunge, dated 20th February 1849.

Dervesh Mahomed, Appellant,

versus

Mahomed Arif and others, Respondents.

APPELLANT sued for rupees 150, damages to character; and the moonsiff decreed rupees 8, with appellant's full costs against Mahomed Arif.

Both parties appealed, and Mahomed Arif's appeal has resulted in the appellant's claim being dismissed wholly by the principal sudder ameen. Under these circumstances I have only to dismiss the present appeal.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, with costs.

ZILLAH TIRHOOT.

PRESENT: JOHN FRENCH, ESQ., ADDITIONAL JUDGE.

THE 14TH FEBRUARY 1850.

No. 55.

Regular Appeal from a decision passed by Moulvee Mahomed Mohamid Khan, Sudder Ameen of Morufferpore, dated 18th of December 1846.

Musst. Dahoo Chowdraen, Funnee Chowdraen, Beicha Chowdraen, and Sona Chowdraen, widows of Hurruk Duth Chowdree, and guardians of Kupleisur Chowdree, minor son of Hurruk Duth Chowdree, (Plaintiffs,) Appellants,

versus

Gopaul Chowdree and nine others, (Defendants,) Respondents.

THE appellants instituted this suit to recover the sum of Company's rupees 640, being the principal, interest, and difference of exchange from Sicca rupees into Company's rupees of an advance of Sicca rupees 300, made by Hurruk Duth Chowdree to Doolar Singh Chowdree and others, ancestors of the defendants, proprietors of the village Hurrecahpore Sookwar, pergunnah Ludawun, on a lease granted by them of 4 annas portion of the said village, dated 4th of Assin 1238 Fuslee, for the period of five years from 1239 to 1243 Fuslee, on an annual rent of rupees 36, stipulating therein, if the advance be not paid on the expiration of the lease, that it was to be continued to be held until the advance was discharged. Possession of the lease was held to the expiration of the year 1243 Fuslee, about that time the whole village was sold at auction on account of arrears of revenue due to the Government, whereby the lessee was dispossessed on the commencement of 1244 Fuslee, although the former proprietors litigated the matter of sale in the courts to the Sudder Dewanny Adawlut, and by the reversal of the sale in 1250 Fuslee obtained the recovery of their property, yet have not restored the lease to the lessee or his heirs, or discharged the money advanced; they therefore sue the heirs of the lessors for the amount, &c. of the advance.

The defendants allowed the case to go by default.

The sudder ameen dismissed the suit on following grounds. The document is dated the 4th of Assar 1238 Fuslee, from which time a long period has elapsed, and the cause of delay in instituting this

suit is not mentioned. If, of the lessors, four persons have died, it is not known what had been realized by the ancestor of the plaintiff. On the margin of the lease there are five persons' names inserted as witnesses, of whom three persons have not been adduced, on the plea they are dead: the two witnesses who have been adduced are unlearned, cannot read nor write, their names, written by another person, are in a minute handwriting, from which it would seem to have been written subsequently to the writing of the document.

Plaintiffs appealed from this decision, urging: although the suit was instituted against some of the lessors, and the heirs of those who had died, they all allowed the case to go by default. If the document be of a long standing, such as this, a lease on advance does not come under the limitation rule. The produce of the lease was not sufficient to cover the interest on the advance. The writing of the two witnesses' names by another person is not prohibited: on thousands of documents the witnesses' names are written by another person. The dismissal of the suit is not just.

COURT.

Notice and proclamation were issued for the attendance of the respondents in person or by attorney, and evidence of witnesses of serving the notice and the proclamation made public by beat of drum, was taken, yet the respondents have again allowed the suit to go by default. There does not appear any cause for suspicion, arising from the diminutive writing of the witnesses' names, who gave their evidence in this case, that they were written subsequent to the execution of the document: for it is evidently perceptible, they were written by the same pen that the witness used who wrote his name in Persian. The points of enquiry (the defendants having allowed the case to go by default) should have been, the fact of the sale of the village on account of arrears of revenue to Government, for the ascertainment of the date the lessee was dispossessed, and the date the lessors and proprietors of the village were again put into possession of their property, and application for the restoration of the lease or repayment of the advance was made. Owing to failure of such enquiry, the investigation is incomplete. Therefore, ordered, the decision of the sudder ameen be reversed, and the case be returned for re-investigation on the points above indicated. Amount of stamp of appeal plaint be returned to the appellant.

THE 14TH FEBRUARY 1850.

No. 208.

Regular Appeal from a decision passed by Moultee Syud Munneerooddeen Hossein, Moonsiff of Mowah, dated 26th of February 1848.

Gujraj Tewaree, (Defendant,) Appellant,

versus

Musst. Zeenut, the wife of Shaik Fyzul Ali, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent to recover the sum of Company's rupees 25-4, being principal and interest of arrears of rent from 1248 to 1254 Fuslee on 12 beegahs of land, situate in village Naraenpore Boozurg, chukla Gorejole, pergunnah Beesarah.

The plaint sets forth: 7 annas portion of the village is in the possession of the plaintiff under a deed of bye mukasah from her husband, and in which deed it is stipulated whatever may be formerly due thereon, it appertains to her, the plaintiff. The defendant is a cultivator of 12 beegahs in the whole 16 annas of the village, under kuboolyut, but refuses to pay the plaintiff's proportion thereof: therefore sues agreeably to the putwaree's accounts for her share of the rents.

The defendant denies having written the kuboolyut; the rents of the 7 annas portion have been paid to the husband of the plaintiff, and the receipts of the payments are forthcoming; that the attestation of the bye mukasah has not to this period taken place.

The moonsiff passed a decision in favor of plaintiff, on the grounds: by the evidence of the putwaree and other witnesses the kuboolyut has been proved to have been executed by the defendant, and the balance due has also been proved. The witness adduced by the defendant, the discharged putwaree, deposed that he did not know whether the defendant cultivated the kowlee lands, yet the receipts filed by the defendant are for rents on account of cultivation of kowlee lands, which receipts are deposed to as correct, and having his own name attested thereon: from this contradiction in the deposition no dependance can be placed on the receipts.

From this decision the defendant appealed, urging: the receipts filed by him were proved. If omission was made in his reply to plaint, that a portion of the cultivation was of the kowlee lands, it was amended by the replication, which is not beyond the pleading, in proof that the land is kowlee: the proceeding of the foudjarry and of the court are forthcoming.

COURT.

The plaint for rent is made on the basis that the plaintiff is proprietor of the 7 annas portion of the village under a deed of bye mukasah from her husband. This deed is not filed in the case, nor do any of the documents filed in the case prove the authenticity of such a deed; moreover, it is necessary that deed should be filed

to prove whether the plaintiff had a right to the balances due on the portion prior to the deed of bye mukasah. Hence the investigation is incomplete, therefore the decision of the moonsiff is reversed, and the case returned for re-investigation on the point above indicated. The amount of stamp of the appeal plaint to be returned to the appellant.

THE 15TH FEBRUARY 1850.

No. 521.

Regular Appeal from a decision passed by Moulvee Mahomed Mohamid Khan, Additional Principal Sudder Ameen of Mozufferpore, dated 24th July 1848.

Andrew Crawford, (Defendant,) Appellant,

versus

Cheidee Taqoor and others, (Plaintiffs,) Respondents.

THIS suit was instituted by the respondent to recover the sum of Company's rupees 1,482-3, arrears of rent, on account of land taken by the appellant for cultivation of the indigo in the village Bhusalah *alias* Bussarah, pergunnah Goorshawund. The additional principal sudder ameen decreed in favor of plaintiff 20 rupees less than the amount sued for, on the grounds: by the evidence of witnesses and measurement of the land the plaint was proved.

The defendant appealed from this decision, urging: the decree was passed in favor of plaintiff on the mere evidence of the putwara-ree, and inaccurate measurement of the several parcels of land, &c., both parties having severally filed petitions that the matter of their litigation had been adjusted between them, and that each was to pay his respective costs, therefore prayed the case might be struck off the file, and the amount of stamp of appeal plaint might be refunded to the appellant. Having ascertained the correctness of the applications, therefore, ordered, the case be struck off the file, and the amount of stamp of appeal plaint be returned to appellant.

THE 16TH FEBRUARY 1850.

No. 705.

Regular Appeal from a decision passed by Moulvee Syud Munneerooddeen Hossein, Moonsiff of Mowah, dated 25th of November 1848.

Joy Joy Ram and Jesse Ram, (Defendants,) Appellants,

versus

Boocha Singh and Rugbeer Singh, (Plaintiffs,) Respondents.

THIS suit was instituted by respondents to recover the sum of Company's rupees 260-11-9, being the principal and interest due on a deed of instalment bond, executed by appellants on the 9th of

Kartick 1252 Fuslee, in payment of a debt due by them to the respondents, on account of proceeds of profits on a lease of village Shumspoorah, chukla Gorejole, pergunnah Beesarah. The term of the instalment bond having expired without the payment of any one instalment, they are induced to sue for the recovery of the debt.

The appellants, in reply to plaint, acknowledge the executing the instalment bond to be correct, but aver three of the instalments had been paid amounting to rupees 126, for which they hold receipts for the distinct payments, under dates the 23rd of Assin 1253, 25th of Poose 1253, and the 22rd of Assin 1255 Fuslee: one instalment is still due for which they await the order of the court.

The moonsiff decreed in favor of the plaintiffs, on the ground: from the evidence of the subscribing witnesses to the deed, and the acknowledgment of the defendants of having executed the instalment bond, and the defendants having filed no receipt of the instalment payments.

The appellants urge: that their answer was filed on the 16th of November 1848, and the moonsiff passed the decision on the ninth day after, without giving them sufficient time to procure and file the receipts, as they were with an attorney at Durbungah; their attorney applied for a period of seven days to adduce the receipts, which was not acceded to; besides which there was another suit instituted by these plaintiffs against themselves, of the same nature as this, pending in the moonsiff's court, which should have been decided at the same time with this, and was not, which is contrary to Circular Orders dated 30th of September 1847.

COURT.

On perusal of the papers of the case, the replication of the plaintiffs was filed on the 24th of November, and the decision was passed the very next day, which shews sufficient time was not allowed to the defendants to adduce their receipts, hence the investigation was incomplete. Therefore, ordered, the decision of the moonsiff be reversed, the case be returned for re-investigation to be tried *de novo*, after calling on the defendants to file proofs of their allegation, and allowing them sufficient time to do so. The amount of stamp of appeal plaint be returned to appellants.

THE 16TH FEBRUARY 1850.

No. 213.

Regular Appeal from a decision passed by Moulvee Syud Munneeroqdeen Hossein, Moonsiff of Mowah, dated 21st of February 1848.

Bugwan Dutt, Sunt Lall, and three others, (Defendants,)

Appellants,

versus

Ram Surrin Singh, Shew Surrin Singh, and three others, (Plaintiffs,) Respondents.

THIS suit was instituted to recover the sum of Company's rupees 60-14-10½, being arrears of rent due on the cultivation of 4 beeghas

9 biswas of land situate in the village of Bishenpoor Sondo, chukla Gorejole, pergunnah Beesarah.

Purport of the plaint is : 4 annas share of the abovementioned village has been distinctly partitioned off from the village by officers of Government ; 2 annas portion thereof belongs to Rugnath Sahee, of the other 2 annas, one-third belongs to the plaintiffs, and two-thirds to Gunnee Lall and Buttun Lall.

The defendants are cultivators in the half of the 4 annas portion, within which the plaintiffs hold one-third at the annual revenue of 12 rupees, 7 annas, 6 pic at different rates. The defendants are in balance from 1245 to the 12 annas' instalment of 1254 F., who are sued agreeably to the arrears in the putwarrees' accounts, which exhibit the different rates to be 4 rupees, 3 rupees, 2 rupees 7 annas, 1 rupee 14 annas, 1 rupee 9 annas.

The defendants, in answer, allege : they are sharers of a larger portion in the village than the plaintiffs, whose share is greatly less. It is true they are cultivators of 5 beegahs 9 biswas at the rates between proprietors, viz., rupees 1-9, 1 rupee 8 annas, 1 rupee 4 annas, but not the rates stated by the plaintiffs, which are those fixed for the ryots. The plaintiffs also cultivated lands in their share; hence neither has hitherto claimed rent from each other. Agreeably thereto whatever may be proved to be payable at the balance of accounts at the rates stated by them, they are ready to discharge.

The plaintiffs, in their replication, denied cultivating any land within the portion of the defendants ; and the rates stated by them were erroneous.

Buttun Lall and Gunee Lall filed a third party petition in corroboration of the plaint.

The moonsiff passed a decree in favor of plaintiffs for the whole amount claimed, on the grounds : the defendants acknowledge the cultivation, and are liable to payment of rent, but object to the rates stated by the plaintiffs, whose rates are established by the evidence of their witnesses and that of the putwarree of the village.

The defendants appealed, urging : the witnesses adduced are in the employ of the plaintiffs ; and a decree for the plaintiffs on their evidence was not just. The moonsiff should have deputed an ameen on the spot to ascertain the rates. A list of witnesses was filed to prove the correctness of the rates stated, and they were in attendance at the court, but their evidence was not taken, and of this circumstance there is no mention made in the decision.

COURT.

Among the papers of the case no list of witnesses appears to have been filed by the defendants, nor does it appear the moonsiff called on the defendants for proof of their allegation, consequently the investigation was incomplete. Therefore, the decision of the moonsiff is reversed, and the case returned for re-investigation after taking proof and evidence of the defendants' allegations. The amount of stamp of appeal plaint be returned to the appellants.

THE 19TH FEBRUARY 1850.

No. 629.

Regular Appeal from a decision passed by Moulvee Neamat Ali Khan, Principal Sudder Ameen of Mozufferpore, dated 30th of August 1847.

Andrew Anderson and James Cosserat, recently in lieu of them,
Mrs. Taylor, (Defendants,) Appellants,

versus

Shaik Thawur Ali, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent to recover from the appellants (defendants) the sum of Company's rupees 1,736-10, being the principal and interest on a portion of a loan of rupees 5,000, on bond, executed by the original appellants in the name of Munhurrun Lall. Munhurrun Lall originally sued the appellants for the unpaid portion of the loan. On investigation of that suit, by the then principal sudder ameen, it appearing the loan was *bonâ fide* made by Shaik Thawur Ali, although rupees 2,000 thereof belonged to Munhurrun Lall, who did not, and was not present when the loan was made, and the bond executed; that suit was on those grounds nonsuited, with directions for Munhurrun Lall to sue Shaik Thawur Ali for the money, and on payment thereof Shaik Thawur Ali could sue the gentlemen. That decision was passed on the 22nd of December 1840, and on appeal from it the judge confirmed the decision on the 27th of July 1841. The money having been paid to Munhurrun Lall, without institution of a suit against Shaik Thawur Ali, hence Thawur Ali instituted this suit for the recovery of the unpaid portion of the loan taken by the original appellants (defendants,) for which they granted a bond.

The defendants (appellants,) in their answer, alleged: the bond had been discharged, by making over to Shaik Thawur Ali, the plaintiff (respondent,) the receipt for rupees 996, given to them by Joykishen Lall for the money taken by him, and the remainder by a draft on their banker, and the bond was returned to them.

The plaintiff, in his replication, denies the delivery to him of any receipt of Joykishen Lall, as a set-off in part payment of the bond, and alleges Mr. Anderson having expressed a wish to discharge the bond for rupees 5,000, it was sent for, on reaching his hands, Mr. Anderson asked for it, on handing the bond to him, he took and locked up the bond in his box, paid the amount of rupees 4,000 of the loan, and said the remaining rupees 1,000 would be adjusted on the arrival of Mr. Cosserat, who was then absent, but it has never been adjusted, and is still due.

The principal sudder ameen, on the 28th of June 1843, passed a decision in favor of the plaintiff, on the grounds: the decisions, under dates 22nd December 1840 and 27th of July 1841, establish the claim against the defendants.

From this decision the defendants appealed, urging: Joykishen Lall, the son of Munhurrun Lall, having embezzled the sum of rupees 996, that sum was deducted from the loan, and the remainder was paid. The nonsuit decisions are no proof in this case.

The respondent answered, the nonsuit decisions satisfactorily prove his claim.

The appeal case was transferred to this court for trial. On perusal of the papers, the receipt of payment of the debt to Munhurrun Lall, on which the respondent grounds his suit in conformity to the instructions conveyed in the decisions of nonsuit, was not filed, nor called for. The investigation thereby was deemed incomplete. Therefore the decision of the principal sudder ameen was reversed, and the case returned for re-investigation: to call on the plaintiff to file the receipt, to ascertain the correctness thereof, and that it be written on a proper stamp. To call from the record office the nuthee of the nonsuit case, to peruse the same in order to gain, if possible, the truth of the litigation. To call on the appellants to file the bond for rupees 5,000, to ascertain whether the deduction on account of the amount said to have been embezzled by Joykishen Lall was admitted thereon, and under what circumstance was the bond delivered up, and received.

After re-investigation of the case, the principal sudder ameen passed the following decision. The receipt of Munhurrun Lall has been filed and proved. The defendants were called on to file the bond for rupees 5,000, which they state had been torn up. For the deduction required by the defendants there is no documents, and the evidence of witnesses adduced by the defendants on that point is not to be depended on; therefore, decree for the plaintiff (respondent.)

The defendants appealed, urging: the bond called for had been torn up, when the plaintiff deducted the sum of rupees 996, and took the remaining amount of the loan, and returned the bond. The suit of the plaintiff is inadmissible.

Respondent filed no answer.

COURT.

The grounds of pleading of the defendants in this suit are dissimilar to those in the former, or nonsuit case. If the defendants had in reality taken a receipt from Joykishen Lall for the sum or sums embezzled by him, and that receipt was made over to Shaik Thawur Ali, in part payment of the loan of rupees 5,000, those circumstances would have been indubitably pleaded in that, as in the present suit. The insertion thereof in the pleadings of the present suit, seems to have been gleaned from the evidence of witnesses given in the former case, which evidence exceeding the bound of pleadings evinces the witnesses had been tutored, and the evidence cannot be depended on; and the evidence of witnesses in the present suit is similar thereto, and cannot be depended upon. From the deviation of

the pleadings in the present suit to that in the nonsuit case, which are filed in this case, and the pleadings in the present suit, or in that of former suit making no mention that Munburrun Lall was security, and responsible for any speculation effected by Joykishen Lall. Hence the set-off required by the defendants cannot be admitted. Therefore, ordered, the decision of the principal sudder ameen be affirmed, and the appeal dismissed, with costs chargeable to the appellants.

THE 20TH FEBRUARY 1850.

No. 214.

Regular Appeal from a decision passed by Moulvee Syud Munneerooddeen Hossein, Moonsiff of Mowah, dated 21st of February 1848.

Radei Singh, (Defendant,) Appellant,

versus

Hurbuksh Singh, (Plaintiff,) Respondent.

THE respondent instituted this suit to recover the sum of Company's rupees 28-9, being the principal of arrears of rent due from the appellant on 4 beegahs of land, situate in village Jurawulpore, pergunnah Hagypore, from 1252 to 1255 Fuslee.

Purport of the plaint is: that one of the proprietors of the aforesaid village, named Rajkoomar Singh, took from the respondent a loan of 50 rupees, and granted a bond under date 15th of Bysakh 1251 Fuslee, and, for payment of interest thereon, made over the produce of the 4 beegahs of land under the appellant's cultivation, to be paid him annually until the debt was discharged: agreeable thereto, in the year 1252 Fuslee, the appellant paid to the respondent Company's rupees 8, and has failed to make any payment since; hence the suit at the rate of rupees 2 per beegah, with interest thereon.

The answer to plaint alleges: that the pottah of the proprietor under which he holds the 4 beegahs of land, fixes the annual rent at rupees 6 only; agreeably to which he has annually paid to respondent (plaintiff,) from 1252 to 1254 Fuslee, for which the receipts of the putwarree are forthcoming, and that 1 rupee for 1255 Fuslee was paid, but for which no receipt was given.

The moonsiff decreed in favor of respondent (plaintiff) to the extent of rupees 16-9-6, on the grounds: the receipts filed by the defendant (appellant) were denied by the putwarree to be his handwriting; and that the rent at rupees 2 per beegah was erroneous, it was fixed at rupees 1-8 per beegah, according thereto the decree is passed.

The appeal from this decision alleges: the decree in favor of plaintiff is not valid on the mere statement of the putwarree, he being only one witness. It was requisite for the moonsiff to have made enquiry, whether the receipts were or not written by the put-

warree, which not having been done, hopes such enquiry will be effected.

COURT.

On the putwarree's denying the receipts, filed by the defendant, to be his handwriting, the moonsiff should have called on the defendant to prove the rents had been regularly paid agreeably to the receipts, and that the receipts were in the handwriting of the putwarree, by adducing three or four ryots with their receipts, that they might be compared with those of the defendants to ascertain their correctness or otherwise; and to call for the several jumma-wasil-bakee accounts of the village to ascertain from them what were the payments made and what the balance due. This not having been done, shews the investigation is incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for re-investigation on the points above indicated.

THE 20TH FEBRUARY 1850.

No. 228.

Regular Appeal from a decision passed by Moulvee Syud Azeem Allee Khan, Moonsiff of Dulsing Surae, dated 29th of February 1848.

Eshurdutt Singh, Bondoo Singh, and Gobind Singh, (Defendants),
Appellants,

versus

Luttoor Singh, (Plaintiff,) Respondent.

THIS action was for the sum of Company's rupees 15-10, the value of thatching grass. The plaintiff declares himself the lessee of village Nawarrahn Boozurg, pergunnah Sureisa, from which he had laden five carts with thatching grass and despatched it to his own house at Bishenpore Sona: when the carts had reached the ghaut Bishenpore, the defendants brought a crowd of people, pillaged the carts, and carried away the thatching grass.

The defendants, Doondhye Singh and Boochye Singh, in their answer, allege the plaint to be false; they never forcibly carried away the thatching grass, and if it had been forcibly carried away, a complaint would have been lodged in the foudjdaeree.

Eshurdutt Singh, Bondoo Singh, and Gobind Singh alleged: half an anna of the village is leased to the plaintiff, and the 4 beegahs of kuroor (or thatching grass land) is distinct from the plaintiff's lease.

In 1253 Fuslee, the plaintiff cut and carried away 2 beegahs of thatching grass: when about to complain, he promised to pay the price thereof. In 1254 Fuslee, he again cut and carried the thatching grass: when about to sue him, he in anticipation instituted this suit.

The moonsiff decreed in favor of the plaintiff, on the grounds: that the defendants filed a list of witnesses, but on issue of the sub-

poena, the witnesses were not pointed out and they have not adduced them. The evidence of the plaintiff's witnesses has proved his claim against Eshurdutt Singh, Bondoo Singh, and Gobind Singh; but as no proof is adduced against the other two defendants, they are exempted from liability, and the decree is against the three defendants abovenamed, with costs.

The defendants appealed from this decision, urging: until the carrying away the property by forcible means be not established in the foudjaree, the price thereof cannot be sued for. The kuror land is distinct from plaintiff's lease: the grass therefrom the plaintiff carried away in the years 1253 and 1254 F., which was not enquired into by the moonsiff. When the subpoena for the witnesses was issued, the witnesses were not then attainable: a period of fifteen days' delay was therefore requested for the purpose of adducing them, which was not acceded to.

COURT.

There is no dependance to be placed on the evidence of the plaintiff's witnesses, who deposed that the circumstance of carrying away the property by force was intimated to the thannah Tuchpore, that a burkundaz came and placed the thatching grass in the defendants' possession and took a receipt for the same. Now, this evidence exceeds the plaint and replication, for there is no mention of such circumstances in either of those pleadings: hence it leads the mind to suspect the witnesses were tutored to give their evidence to circumstances which were not conceived at the time of writing out the pleadings. The real dispute is, whether the thatching grass appertains to the plaintiff or defendants (appellants.) The plaintiff should have been called on to file his lease and prove the validity thereof by the subscribing witnesses thereon, for the plaintiff alleges he was lessee of the whole village, and the defendants allege they had leased to the plaintiff half an anna only of their share in the village, and that the thatching grass land was distinct from the plaintiff's lease, and that he had secretly cut and carried off the grass from their land. And the defendants should have been called on to file the plaintiff's kubooleut of their lease; and an ameen should have been deputed to ascertain what land had been leased to the plaintiff, and whether the kuror land, from whence the grass was cut, was within or excluded from the plaintiff's lease. These measures not having been taken by the moonsiff, his investigation is incomplete. Therefore, the decision of the moonsiff is reversed, and the case returned for re-investigation on the points above indicated. The amount stamp of the appeal plaint be returned to the appellant.

THE 22ND FEBRUARY 1850.

No. 238.

*Regular Appeal from a decision passed by Moulree Syud Azeem Allee Khan,
Moonsiff of Dulsing Surae, dated 7th of March 1848.*

Raj Koomar Raee, (Defendant,) Appellant,

versus

Musstn. Raj Bunsee Koonwur and Phool Koonwur, (Plaintiffs,) Respondents.

THIS suit is instituted to recover the sum of Company's rupees 147-14-3, being the principal and interest of arrears of rent on the cultivation of 6 beegahs and 15 biswas of land in cash, and other lands in kind and syer, situate in village Hursingpore, pergunnah Surirsah, from 1246 to 1253 Fuslee. The plaintiff is proprietor of the whole village: the ryuts not paying their rent, he therefore sues, agreeably to the putwarree's accounts.

The defendants answered that Takoor Raee and Sunder Raee have no concern in the cultivation, the whole 6 beegahs 15 biswas are carried on by Raj Koomar Raee, at an annual rent of rupees 19-5-9, the rent of which has been paid from 1246 to 1253, some on receipts and others not, but which will be proved by witnesses. The bhowlee being on low land, nothing has been obtained therefrom owing to inundations. The mowah and kutul trees, being within the land rented on cash payment, the plaintiffs have no claim for distinct rent thereon, and the bel tree was cut and carried away by the plaintiffs.

The moonsiff passed a decision in favor of the plaintiffs, on grounds: the evidence of the plaintiffs' witnesses proved their claim; the plaintiffs had given credit for a larger sum than the amount of the receipts filed by the defendant.

From this decision Raj Koomar appealed, urging: the putwaree adduced by plaintiffs was appointed in the year 1252 Fuslee, yet he filed accounts from 1246 to 1253 Fuslee, and deposed to the truth thereof; surely it should not be depended on. It was necessary the former putwaree, who is still alive, should have been adduced to prove his accounts. His witnesses proved the trees were on the land for which he pays cash rent; it is not just to make him pay rent twice.

COURT.

From an examination of the pottah and kubooleut, they appear to be counterparts of each other, and although there is no specification regarding the rent of the trees in either of the documents, yet from the evidence of the witnesses it seems to be customary for the proprietor to levy his half share from the trees, as distinct rent to that of the land, and the witnesses proved that the appellant cultivated bhowlee adjoining to their own. The appellant did not file

any list of witnesses to prove the payments of those rents, for which he obtained no receipt. It would seem the appeal was preferred to delay payment of his rents. There appearing no cause for impugning the decision of the moonsiff, therefore, ordered, that the decision of the moonsiff be affirmed, and the appeal be dismissed, with costs of both courts chargeable to the appellants.

THE 22ND FEBRUARY 1850.

No. 251.

Regular Appeal from a decision passed by Moulvee Syud Azeem Allee Khan, Moonsiff of Dulsing Surae, dated 2nd of March 1848.

Nuwaz Raee and thirteen others, (Defendants,) Appellants,

versus

Raje Bunsee Koonwur and Phool Koonwur, (Plaintiffs,) Respondents.

THIS suit was instituted to recover the sum of Company's rupees 297-12-7, being principal and interest of arrears of rent, on 8 beegahs of rhakaunt and syer, situate in village Hursingpore, pergunnah Sureisa. The plaintiffs are proprietors of the whole village: the defendants, ryots thereof, having fallen into arrears of rent from 1246 to 1252 Fuslee, as shewn in the putwaree's account, which they have signed as correct, and not discharging it, they accordingly thereto sue for the rent.

The defendants, in answer, deny the plaint *in toto*, and hope an ameen may be deputed to ascertain whether they had any cultivation whatever.

The moonsiff decreed in favor of plaintiffs, on the grounds: the evidence of the plaintiffs' witnesses proves the plaintiffs' claim. That the defendants were called on the 3rd of May 1847, to deposit the fees of the ameen, who was to be deputed to make the necessary enquiry on their part, but have not made the deposit to this day.

The defendants appealed, urging: the plaintiffs' suit is contrary to Construction No. 807, two witnesses were adduced by the plaintiffs, one their own servant, and the other a putwaree, who was appointed in 1252 Fuslee, hence their evidence is not to be depended upon. The fees for the ameen were tendered by their attorney but not taken, owing to the period having elapsed.

COURT.

With respect to the objection urged by the appellants that the suit is contrary to Construction No. 807, not having been urged in the pleadings of the first instance, cannot be taken cognizance of appeal. The appellants, as defendants, were directed on the 3rd of May 1847, to deposit the fees on account of ameen, who was to be deputed to make the necessary enquiry at their own request, not having deposited the money for near ten months, the decision having been passed on the 2nd of March 1848, is also unfavorable towards them, but the circumstance of causing the defendants to sign

the account is correct, and that by the pen of another person is irregular and suspicious, and ought not to be admitted, as creating a bad precedent. The moonsiff should have called for the original jumma-wasil accounts, and ascertained from them whether the defendants are actually cultivators of land, and, if so, what balance is due from them: not having done so, the investigation is incomplete. Therefore, the decision of the moonsiff is reversed, and case returned for re-investigation on the points above indicated. Amount of stamp of appeal plaint to be returned to plaintiff.

THE 23RD FEBRUARY 1850.

No. 252.

Regular Appeal from a decision passed by Pundit Dataram, Moonsiff of Teighra and Beegoo Surae, dated 6th of March 1848.

Bugwunt Ram and Musst. Bugwuntee Koonwur, (Defendants,) Appellants,

versus

Girdharee Lall and three others, the heirs of Nuwazee Lall, deceased, (Plaintiffs,) Respondents.

THIS was to recover the sum of Company's rupees 15-3-1, being principal and interest of surplus revenue paid into the collectorate on account of village Mooksoospore, pergunnah Boosaree.

The plaint states: the village is in three shares of one-third portion each, being in possession of the respective sharers, who pay the revenue thereof separately into the collectorate, yet the village is borne on the books of the collectorate as joint property. The plaintiffs have regularly paid their revenue of one-third share into the collectorate, but the sharers of the other two portions having failed to pay their revenue, they, the plaintiffs, were induced, to prevent the village being put up to sale for arrears of revenue, to discharge the balance annually from 1246 to 1253 Fuslee, on account of the defendants, which surplus payments amount to rupees 74-4-4, and interest thereon rupees 40-14-9. On demanding the amount of the money, the defendants put it off from day to day, hence the cause of this suit.

The answer of Bugwunt Ram and Musst. Bugwuntee Koonwur, proprietors of one-third share of the abovementioned village, allege: that they leased their share to the indigo factory at Mujhole, as far back as 1248 Fuslee; it having been stipulated in the lease that the lessee was to pay the revenue of Government into the collectorate; and agreeably to which the gentleman of the factory has paid the revenue of that, their share of the revenue, into the collectorate of Monghyr. It was necessary that the plaintiffs should have included the lessee as defendant.

The defendants of the other one-third share of the abovementioned village allowed the case to go by default.

The moonsiff decreed in favor of the plaintiffs, on the grounds: from the twenty-nine receipts filed by the plaintiffs it is proved the defendants are indebted to the plaintiffs the amount surplus payments of revenue claimed by them, therefore decreed against all the defendants.

The defendants of one-third share of the village, who answered the plaint, being dissatisfied with the division appealed, urging: that the moonsiff made no enquiry what revenue had been paid into the collectorate by the sharers of each share or division. They were endeavouring to obtain from the Monghyr collectorate an account of the distinct payments of revenue, when the moonsiff decided the suit without calling on either party to file such requisite accounts for the correct judgment of the case.

COURT.

In a suit of this nature, it was requisite for the plaintiff to have filed an account, shewing the amount of revenue paid on account of each division of the village; for the aggregate amount of the receipts filed by the plaintiff, may exhibit a surplus amount of revenue had been paid by him beyond his quota of the revenue, yet on account of which division of the village is not ascertainable. It was necessary for the moonsiff to have called on both parties to file an account of the annual payments made into the collectorate, and also to file the receipts of each distinct payment, from which some clue may have been obtained as to what portion of the revenue had actually been paid by the sharers of each distinct division. The moonsiff not having called for such accounts shews the investigation to be incomplete. The moonsiff having, moreover, passed a decree against all the defendants, when the two portions of defendants are avowedly distinct, and their different liabilities ascertainable, the decree is contrary to Construction No. 849, dated 20th of December 1833. Under the above circumstances, the decision of the moonsiff is reversed, and the case returned for re-investigation on the points above indicated.

THE 23RD FEBRUARY 1850.

No. 519.

Regular Appeal from a decision passed by Moulvee Niamut Alee Khan, Principal Sudder Ameen of Mozufferpore, dated 22nd of July 1846.

Musst. Minrinzin Koonwur, (Defendant,) Appellant,

versus

Mindernaraen Singh and Boopnaraen Singh, guardians of Deepnaraen Singh, their minor brother, (Plaintiffs,) Respondents.

THE action is laid at Company's rupees 2,241-9-5, and the suit instituted for possession and commutation of the names of the plaintiffs, in the records of the collectorate of 1 anna, 6 gundahs, 2

cowrees, 1 krant within 2 annas portion of the whole village of Gunneepore Bejjah, and the same portion in village Jurhooa, pergunnah Jukulpore. The share of the demised husband of the defendant, Musst. Minrinzin Koonwur devolves to the plaintiffs, but the widow will not relinquish her claim thereto, although she is entitled to mere support during her existence; having been led away by the collusion of the other defendant, Nursingnaraen Singh, to withdraw from the family compact and residence, he is therefore included as defendant in the case.

Musst. Minrinzin Koonwur alleged, that her husband had separated from the plaintiffs, whereby she was entitled to retain possession until her demise.

Nursingnaraen Singh denied collusion with the widow, but stated she had a right to possession of the property of her demised husband during her existence, and that, after her demise, he had an equal claim with the plaintiffs to a portion of the property.

The principal sudder ameen decreed in favor of the plaintiffs, on the grounds: the evidence of the plaintiffs' witnesses had proved their plaint, and the defendant had not filed any documental proof that her husband had been separated from the family compact. Costs chargeable to the defendants.

The widow, defendant, appealed from this decision, urging that sundry documents had been filed in proof of her husband's separation from the plaintiffs, which have not been taken into consideration by the principal sudder ameen.

A petition having been filed stating the demise of the appellant, a proclamation was issued and stuck up against her late residence, and also proclaimed by beat of drum in the village, for the attendance of her heir or heirs in person or by attorney, to prove their relationship to the demised, and for the purpose of carrying on the suit. The proclamation was issued on the 24th of December 1849, and no person having come forward to prove relationship to the demised widow, appellant, to this date, the 23rd of February 1850, the appeal was directed to be struck off the file in conformity to Section 1, Act XXIX. of 1841.

THE 23RD FEBRUARY 1850.

• No. 518.

Regular Appeal from a decision passed by Moulvee Niamut Alee Khan, Principal Sudder Ameen of Mozufferpore, dated 22nd of July 1848.

Nursingnaraen Singh, (Defendant,) Appellant,

versus

Mindernaraen Singh and Bhoopnaraen Singh, guardians of Deepnaraen Singh, their minor brother, (Plaintiffs,) Respondents.

THIS is an appeal from the decision passed by the principal sudder ameen in case No. 519, on the plea that the principal sudder ameen

had unjustly taxed him conjointly with the principal defendant, Musst. Minrinzin Koonwur, with the costs of suit, to which he was not liable, and from which he hoped to be exonerated, not having opposed the plaintiffs.

COURT.

On perusal of the papers, it appears from the evidence of witnesses that Nursingnaraen Singh, after the demise of the other defendant's husband, colluded with the widow and caused her to separate from the family compact, by her withdrawing to another residence. This shews he caused the dissension. Therefore, ordered, the appeal be dismissed, and the decision of the principal sudder ameen be amended, insomuch that the appellant be chargeable with his own costs and half of the costs of the plaintiffs.

THE 25TH FEBRUARY 1850.

No. 260.

Regular Appeal from a decision passed by Moulvee Syud Munneerooddeen Hossein, Moonsiff of Mowah, dated 7th of March 1848.

Rugbeer Singh and Buchah Singh, (Plaintiffs,) Appellants,

versus

Dookit Singh *alias* Sookram Singh, vendor, and Rooshee Singh, purchaser, (Defendants,) Respondents.

THE action was laid at Company's rupees 43-0-6, and the suit the right of pre-emption of 2 annas, 12 gundahs, 2 cowrees within 4 annas division of the whole 16 annas of the village Singurah Boozurg, chukla Gorejole, pergunnah Beesarah.

In this case it will suffice to state that the moonsiff, on the grounds of the plaintiffs having established the several points and proved their claim, but a plaintiff in another case No. 163, having also proved his right of pre-emption to the same property, therefore, agreeably to law, decrees an equal portion of one-third of the property to each of the plaintiffs; that is two-third to the plaintiffs in this case, and one-third to the plaintiff in case No. 163, and that they do, within one month from this date, severally deposit into court their respective proportion of the purchase money, when they will be entitled to possession.

From this decision the plaintiffs appealed, urging: they had a rightful claim to the whole property sued for, and in the meantime deposited their quota of the purchase money. Ultimately the plaintiffs and the defendant, purchaser, adjusted the litigation between themselves; and both parties filed petitions to that effect.

The court, on enquiry, being satisfied that the petitions were duly filed by the respective parties themselves; and on enquiry from the treasurer of the court, whose report is filed, that the plaintiffs of both cases had deposited their respective proportions of the purchase

money; and that the defendant, Kooshee Singh, had taken the whole amount of purchase money out of court, therefore, ordered, as the case had been adjusted between the parties themselves, that it be struck off the file.

THE 25TH FEBRUARY 1850.

No. 261.

Regular Appeal from a decision passed by Moulee Syud Munneeroodeen Hossein, Moonsiff of Mowah, dated 7th of March 1848.

Bassee Singh, (Plaintiff,) Appellant,

versus

Dookit Singh *alias* Sookram Singh, vendor, and Kooshee Singh, purchaser, (Defendants,) Respondents.

THIS suit is similar to case No. 260. The moonsiff decided both cases under one decision, as detailed in case No. 260. This appeal from the decision of the moonsiff is grounded on the same plea as in the case No. 260, and the whole results the same as in that case.

ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT : H. T. RAIKES, ESQ., JUDGE.

THE 1ST FEBRUARY 1850.

Case No. 23 of 1849.

Appeal from a decision of Roy Hurro Chunder Ghose, Principal Sudder Ameen, passed on the 26th of February 1849.

Baboo Ramruttun Roy, (Plaintiff,) Appellant,

versus

Bholanath Roy, W. N. Hedger, and Byekunt Nath Roy,
(Defendants,) Respondents.

CLAIM, for Company's rupees 825-2-1-8-10-4, being the amount of an accepted draft for rupees 500, with interest.

Plaintiff states that the draft purports to have been made by Bholanath Roy, in favor of W. N. Hedger, and accepted by Byekunt Nath Roy; that he purchased it from Mr. Hedger, and, being unable to realise the amount from the acceptor, he brought this action against all the parties to the instrument.

The only defendant who filed a reply was Byekunt Nath Roy, who alleged that the draft had not been properly protested according to custom, and also that it had been given to Mr. Hedger, in anticipation of professional services to be rendered by him for the defendant Bholanath, in the Sudder Dewanny Adawlut, which services having never been performed, the defendant had demanded the return of the draft. He also pleaded that plaintiff had brought this action in collusion with Mr. Hedger.

The principal sudder ameen, on the circumstances represented by Byekunt Nath, called upon plaintiff to prove that Mr. Hedger had rendered the alleged professional services agreed upon, and on his inability to establish this fact, dismissed the claim.

From this decision the plaintiff has appealed. I observe that the instrument is a common draft or *hand-note* made by Bholanath Roy, in favor of W. N. Hedger, Esq., or order, on Baboo Byekunt Nath Roy Chowdree, for payment of five hundred rupees, at three months after date, and dated 13th of September 1842, accepted according to its tenor by Byekunt Nath Roy Chowdree, on the same day, and protest registered on the face of it by public notary, on the 16th of December of the same year.

It is endorsed by Mr. Hedger, and a stamp affixed to it on the 30th January 1845.

The objection urged by the defendant, who replied, was, want of consideration received from the payee, or party in whose favor the draft was made. I am of opinion this objection cannot be urged to the detriment of a third party now holding the draft, and that the principal sudder ameen was wrong in calling upon plaintiff, the holder of the draft, to prove that proper consideration had been given for it to the maker. I therefore reverse the decision of the lower court and decree plaintiff (appellant) to recover the amount of the draft and expense of protest, with interest, up to date of decree, from 16th of December 1842, and interest on that amount, till payment, with all costs of both courts, and to recover the same, jointly or severally, from the defendants.

THE 6TH FEBRUARY 1850.

Case No. 24 of 1849.

Appeal from a decision of Roy Hurro Chunder Ghose, Principal Sudder Ameen, passed on the 23rd of March 1849.

Nilcomul Banerjee, (Plaintiff,) Appellant,

versus

Hurreemohun Sircar, Brumomye Dossee, and Rajcoomaree Dossee, widows of Bolaram Ghose, deceased, (Defendants,) Respondents.

PLAINTIFF sues for 1,000 rupees, being principal and interest of a bond for money lent to Bolaram Ghose, deceased, husband of the defendants Brumomye and Rajcoomaree Dossee. He also demands enquiry into an alléged collusive decree, under which the defendant Hurreemohun Sircar now holds possession of certain lands, the property of the late Bolaram Ghose, and pledged by him to plaintiff as security for the money lent to him.

The defendant, Hurreemohun Sircar, denies the genuineness of the bond, and states that he has the land under a decree, which was appealed against and confirmed, since which time he has been in peaceful possession; that Ramnarain, the brother of Bolaram Ghose, has instigated this action, and had also opposed him throughout the progress of his suit, but all his objections were overruled.

The bond was supported by the evidence of two witnesses, and the original bill of sale of the property, which, plaintiff asserts, was made over to him by Bolaram Ghose in earnest of the mortgage.

The principal sudder ameen observes, in his decision, that the bond is spurious, as it is evidently newly written on old paper, that moreover the two witnesses, brought to attest it, cannot be relied upon, as they give no probable reason for having been called upon *to attest the document, and acknowledge having given their evidence in other cases.

The principal sudder ameen also goes into the question of the decree under which Hurreemohun holds the land in dispute, and

remarks that plaintiff's possession of the title deeds is attributable to Ramnarain, the brother of Bolaram Ghose; that plaintiff was the real party, who has throughout opposed Hurreemohun, but that the decisions prove the latter's title, and finally dismisses the plaintiff's claim.

The plaintiff appeals from this decision, re-urging his pleas as stated before the lower court.

I concur with the principal sudder ameen in considering the bond most suspicious, and as I find no single circumstance corroborative of plaintiff's claim, but, on the contrary, many reasons against it, such as neither he nor his father coming forward to oppose Hurreemohun during his struggles in the courts for possession, I see no reason to interfere with the lower court's decision. When once the bond was rejected, there was no use to go into the question of Hurreemohun's possession of the property. I do not see, indeed, how he could be made a party in this suit, as the question of his right to hold the land could only be brought to issue by the plaintiff's attaching it, in execution of an award on the bond. A rejection of the bond obviated any further enquiry on this score, and therefore all that part of the principal sudder ameen's decree must be considered as extra-judicial. I dismiss the appeal, with costs.

THE 8TH FEBRUARY 1850.

Case No. 25 of 1849.

Appeal from a decision of Syud Osman Allee Khan, Additional Principal Sudder Ameen, passed on the 30th of March 1849.

Unnuntram Banerjee, (Defendant,) Appellant,

versus

Joynarain Bhowe, Auction Purchaser, (Plaintiff,) Respondent.

CLAIM to enhanced rent, amounting to rupees 108-13-18, on 15 beegahs, 15 cottahs, 1 pao, 3 gundahs of land, with arrears. Value of suit rupees 369-5-7.

Plaintiff states himself to be Government purchaser of talook Longy, &c., to have measured the land and issued his notices, and as defendant holds the above land and refuses to pay the rent demanded for it, he brings this action.

Defendant disputes plaintiff's right to enhance,—first, on the ground that the purchase is benames for the benefit of the old proprietor, and then that his lands are not liable, as he has held them, at the fixed rent he mentions, from his ancestors, who were occupants of part, before the decennial settlement, and purchased the remainder from the parties who occupied them on similar privileges. That 1 beegah 15 cottahs is lakhiraj, and cannot be resumed in this suit.

The additional principal sudder ameen decreed the plaintiff the right to enhance on 11 beegahs, 13 cottahs, 3 chuttacks, 11 gun-

dahs, 10 kag, to the extent of 73 rupees, 6 annas, 5 gundahs, and also awarded him arrears at the same rate of rent, defendant having been unable to produce any proof of exemption.

The defendant has appealed against this decision. He reiterates his pleas, and requests permission to file copies of certain jumwabundee papers of 1190 B. S., to shew that his brother's name is mentioned as occupying 5 beegahs, 8 cottahs of land at that time. He calls attention to the pottahs he has filed for the other lands, and urges he was unable to file the copies of the jumwabundee papers, because they were filed with other proceedings.

I observe that the defendant rests his claim to exemption from enhancement, on the pleas of long continued possession, and payment of the rent he specifies. He calls himself a "khoodkasht kudeemee" ryot, and therefore coming under the exceptions of Section 27, Act XII. of 1841, when the estate was sold.

The jumwabundee papers, he alleges, will prove the possession of his brother in 1190 over 5 beegahs, 8 cottahs, and that he, as his brother's heir, has succeeded to his rights; that for the remainder of the land he holds pottahs granted to his brother or himself, after purchase of the jotes.

With reference to these pleas, it appears to me that the appellant has offered no good reason for not filing copies of the jumwabundee papers in the lower court. It is no excuse for him that these copies were then elsewhere, as he could have procured other copies of the papers. I cannot therefore now receive these papers, as the other side has had no opportunity of calling them in question, or of comparing their purport or correctness with the originals, which, it is notorious, are full of erasures and alterations and unauthenticated. Such evidence, therefore, as these papers could afford appellant, is not now available.

Of the pottahs he has filed, only one is previous to the perpetual settlement, and that is only the pottah of a farmer, whose interest must have been restricted and has long since lapsed. No lease granted by him can be now valid. I therefore see no reason for interfering with the decision of the lower court, and dismiss this appeal.

THE 19TH FEBRUARY 1850.

Case, No. 26 of 1849.

Appeal from a decision of Roy Hurro Chunder Ghose, Principal Sudder Ameen, passed on the 9th of April 1849.

Nubokoemar and Prussonokoomar Mookerjee, heirs and representatives of Rammohun Mookerjee, (Plaintiffs,) Appellants,

versus

Muddunmohun Mallick, (Defendant,) Respondent.

CLAIM, for recovery of Company's rupees 921-9-6, principal and interest, due on bond.

The 'plaint sets forth that Muddunmohun Mullick, defendant in this suit, borrowed from plaintiff (father of appellants) the sum of Sicca rupees 432, and executed a bond on the 23rd of July 1835, at his lodging at Kidderpore, covenanting to repay the loan, with interest, within three months, *pledging verbally* also as collateral security for the debt, 1 cottah, 1 pao of land in Entally Dhee Punchawongong, purchased by him at public auction, the bill of sale of which, he then made over to plaintiff. A suit had once before been instituted for this money, but was struck off on default, and this action was now brought to compel payment.

The defendant denied the execution of any bond, or having ever gone to plaintiff's lodging at Kidderpore, and stated that the land alluded to, is still in his possession, but this suit is brought at the instigation of Rammohun Mullick, who was at one time banian of the collector, and exercised great influence over the subordinate officers, through whose instrumentality he had probably obtained possession of the *bill of sale* said to have been pledged in this matter; that he defied them to produce the receipt book of the collector's office, which would prove his statement to be true. He also drew the court's attention to the fact, that plaintiff in his former suit had called himself resident of one place, and now described himself as residing in another.

The principal sudder ameen remarks first, upon the length of time which has elapsed since the alleged bond was executed before any suit was instituted against the defendant, and the inability of the plaintiff to explain why he has described himself as a resident of Sobhabazar in one case, and of Jorasanko in the present; that he has moreover stated himself to have been a toll darogah at Kidderpore, a fact which is contradicted by the records of the collector's office, which shew that at the date of the bond another person was darogah at that place; that the bond itself has apparently had additions made to it, and does not in itself contain any allusion to land mortgaged as security for its ultimate liquidation. Moreover, the plaintiff could only produce two of the subscribing witnesses (who are quite illiterate,) and neither the writer of it, nor the rest of those whose names are attached to the document, while the evidence of two others, who describe themselves as present when the deed was executed, rather corroborates the defendant's statement, as they admit themselves to be the servants of Rammohun Mullick, and assert that the bond was written in his cutcherry. Plaintiff's statement and the testimony of his witnesses being at variance on so many points, the principal sudder ameen deemed it conclusive of the unfounded nature of plaintiff's claim and dismissed it.

The plaintiff has appealed, but has urged nothing new; and after considering all that he urged in the lower court, I can only come to the same decision as the principal sudder ameen, and therefore dismiss this appeal.

THE 19TH FEBRUARY 1850.

Case No. 27 of 1849.

Appeal from a decision of Roy Hurro Chunder Ghose, Principal Sudder Ameen, passed on the 13th of April 1849.

Dhurm Doss Banerjee, (Defendant,) Appellant,

versus

Joy Narain Bose, Auction Purchaser, (Plaintiff,) Respondent.

SUIT to enhance rent on 62 beegahs, 5 cottahs, 2 pao of land agreeably to rates specified in a notice issued under Section 10, Regulation V. of 1812. Value of suit laid at rupees 1,409, annas 10, gundahs 17, cowree 1.

The plaintiff states himself to be the auction purchaser of the talook in which the lands are situated, and that he has issued the notices on defendant required by law, and that the rates are therein specified.

The defendant disputes the legal right of plaintiff to enhance—first, because he is the “benamee” purchaser on account of the old proprietor, next, that the land he holds is included in the “jumma-bundee” of 1190 B. S. and since purchased by his ancestor, and lastly, that he only holds 33 beegahs, 13 cottahs, 9 chittacks in six different mouzahs, and has always paid a rent of Sicca rupees 126-2-16-1, and that this rent is not now liable to enhancement.

The principal sudder ameen observes that the plaintiff satisfactorily proved the issue of the required notice, and that the defendant, in support of his defence and allegations, could only produce pottahs of the late proprietor in the years 1226 and 1227 B. S. and only after long delay a set of “dakhilas” extending from 1190 B. S., which the principal sudder ameen stigmatised as evidently spurious and prepared for the purpose of filing in this suit.

The principal sudder ameen also rejected the objections of defendant regarding his not holding some part of the lands, as no claimant had come forward, and the ameen deputed for the purpose reported the holding of defendant to consist of 54 beegahs, 15 cottahs. On this quantity of land, the principal sudder ameen assessed a rental of rupees 278, annas 3, gundahs 9, cowrees 2, according to rates shewn by other decisions to be fair rates in the neighbourhood.

The defendant appeals against this decision, but it is clear from the investigation held in the lower court that defendant holds no proofs of any kind which can exempt him from enhancement under the sale law. I therefore see no reason to interfere with the decision of the lower court, and confirm the same.

THE 21ST FEBRUARY 1850.

Case No. 28 of 1849.

Appeal from a decision of Moulvee Syud Osman Allee, Additional Principal Sudder Ameen, passed on the 24th of April 1849.

Darasutoollah Mundul, (son and representative of Ameer Mundul, deceased) for self, and as guardian of his minor brother Frasutoollah, (Defendant,) Appellant,

versus

Jadub Sirdar, (Plaintiff,) Respondent.

To recover possession of 4 beegahs of land, with ponds and trees thereon and mesne profits.

Suit laid at Company's rupees 470, 12 annas, 7 gundahs and 13 krants.

The decision of the additional principal sudder ameen, is as follows :

"This suit was instituted to recover possession of 4 beegahs of land and three dhobas situated thereon, with collections, from which property the plaintiff states he was ejected by defendant's father."

"In his reply, Darasutoollah states that the disputed land was purchased by his father."

"The defendants, Kasseenath, Koobeer, and Soobhul, (who first came forward as parties interested in the case and were subsequently made defendants,) allege that one of the dhobas is their property."

"The evidence of the witnesses cited by plaintiff, and the report of the ameen deputed to make a local enquiry, prove that the land and its appurtenances belong to plaintiff. For this and other reasons therefore, I am of opinion that the proofs tendered by Darasutoollah and Kasseenath, consisting only of oral testimony, cannot be relied upon."

The additional principal sudder ameen then assesses the amount of wassilat at that reported by the ameen, and, rejecting the claim set up by the opposing parties as untenable in this suit, decrees to plaintiff possession of the land in dispute with mesne profits, amounting to rupees 210, 10 annas, 10 pie.

The defendant Darasutoollah appeals against this decision, urging the pleas he put forward in the lower court, and complaining that the additional principal sudder ameen has given no reasons for his decision.

On turning to the record of the case, I find that the plaintiff sues for possession of the land in dispute, as included in what was once the subject of a suit between his ancestor and the then zemindars. His ancestor first procured a decree in the zillah court, and secured possession of the property in execution thereof. The zillah decision, however, was reversed by the then court of appeal, and the parties inducted to possession directed to restore the land, and to account for the proceeds immediately appropriated. Finally, while a

special appeal was pending, the dispute was settled out of court, and a solanamah recorded, under which plaintiff's family have continued to hold the land. The plaintiff, moreover, alleges that Darasutoollah's father, having secured the connivance of the cultivating ryots of these 4 beegahs, instigated them to withhold their rents, and when plaintiff sued them summarily in 1247, Ameer Mundul, father of Darasutoollah, opposed his claim, alleging a pretended purchase of the land from one Cheedam Joogee, which dispute has ultimately given rise to this action.

Darasutoollah meets this claim by maintaining his father's purchase of the property from Cheedam Joogee, who first sold 8 annas, and then 4 annas.

To support this purchase, defendant has only put in his kubala and kubooleuts, or engagements on the part of the cultivating ryots, which are, of course, suspicious documents, unless corroborated by some other substantial proof, whereas the litigation in which plaintiff's family has been engaged, enables the witnesses residing in the neighbourhood to identify the lands in dispute, as a part of those which went into his possession under the first decree, and for which wassilat was assessed by the ameen, who held a local enquiry on this point under the orders of the court of appeal, and the evidence likewise goes to shew that plaintiff had possession of these 4 beegahs, till ousted by the defendant. The evidence therefore seems to me to preponderate in favor of plaintiff, and I therefore confirm the order of the additional principal sudder ameen, but the written decision of that officer is so entirely destitute of reasoning, and consists of such general terms, that it is impossible to know what reasons influenced his mind in giving this judgment. I must here repeat that this officer's mode of recording his decisions is most unsatisfactory.

THE 21ST FEBRUARY 1850.

Case No. 30 of 1849.

Appeal from a decision of Moulvee Syud Osman Allee, Additional Principal Sudder Ameen, passed on the 24th of April 1849.

Kasseenath and others, (Defendants,) Appellants,

versus

Jadub Sircar, (Plaintiff,) Respondent.

THIS case is precisely the same as No. 28, decided this day. The appellants declared themselves the owners and occupants of one of the three dhobas claimed by plaintiff. They could give no proof of their right, and the witnesses, who reside near the place and give their evidence, deposed to the possession of the other defendants, and that the present appellants had never held the dhoba. As the appellants could not support their claim by any proof, I dismiss their appeal.

THE 22ND FEBRUARY 1850.

Case No. 29 of 1849.

Appeal from a decision of Roy Hurro Chunder Ghose, Principal Sudder Ameen, passed on the 19th of April 1849.

Ram Chunder Ghosaul, (Defendant,) Appellant,

versus

Petumber Mookerjee, (Plaintiff,) Respondent.

THE plaintiff states that one Kasseenath, having determined to retire from the world and reside at Benares, divided all his property amongst his three sons living and his grandson Tarakanth, and went to Benares; that 2 annas of a talook, the share of Tarakanth, fell into arrears and was sold, and that the share of Tarakanth in 37 beegahs of rent-free land, was also sold by the collector to liquidate these arrears, and purchased by Sheeb Chunder Banerjee, who sold the property to him. To recover possession thereof, he now sues the defendants who have ejected him.

The only party who defended this suit was Ram Chunder Ghosaul, who alleges that he bought a decree of Sebukram Ghose, by which a mortgage of annas 2-13-1-1 of this rent-free land was foreclosed and decreed in favor of the mortgagee against Hurreemohun, one of the then sons of Kasseenath; that Tarakanth died before Kasseenath, his grandfather, and that consequently his rights and interests in this property had lapsed long before the sale, and therefore the plaintiff's claim could not be entertained.

The principal sudder ameen decreed in favor of plaintiff, remarking that the proceedings in the collector's court proved the fact of Kasseenath having divided his possessions amongst his heirs, and that Tarakanth's share of a certain talook having fallen into arrears and been sold, his share in the property now in dispute was also disposed of by the collector to satisfy the outstanding balance; that no one had ever objected to the sale proceedings; and that as the debt of Tarakanth had accrued during his lifetime, the property left by him was legally amenable for it, and the fact therefore of his death having taken place before or after Kasseenath was a point of no consequence.

Ram Chunder Ghosaul alone appeals from this decision, and repeats the pleas he urged before the lower court.

The following appear to be the facts of this case, and the question is whether the plaintiff, having purchased the rights and interests of Tarakanth at a sale of his property, sold to realise balances due on another estate, has a right to compel restitution from parties in possession.

It appears that Kasseenath Roy divided his possessions equally amongst his three sons, Hurreemohun, Kistenmohun, and Inder-narain, and his grandson Tarakanth, son of his deceased son Radha Mohun. On the 13th of September 1834, a 2 annas share

of Tarakanth in a talook was sold for arrears of revenue, and after Tarakanth's death it was discovered that he had certain rights and interests supposed to be a fourth share in 37 beegahs of lakhiraj land, part of the possessions of his grandfather, to which he had been inducted during his lifetime. This share was sold for a balance of the arrears still credited against him, and, as shewn in the plaint, became the property of the plaintiff, who, it appears, did not get possession, and has therefore brought this suit against all the parties usurping Tarakanth's rights. Amongst these, the appellant has alone come forward to oppose the plaintiff's claim, and states that he holds, of the 37 beegahs, 12 beegahs 10 cottahs being one-third, the share of Hurreemohun, the son of Kasseenath, which Hurreemohun mortgaged to one Sebukram, who procured a decree, which appellant purchased and got possession of the land. Appellant denies that Tarakanth had any share of this, and if he did, he died before his mortgage, and his rights had lapsed to his grandfather, as he had no other heirs. He also denies that any balances were due from Tarakanth, and his vakeel requests permission to file a petition of Tarakanth's widow, requesting the collector to pay her the surplus proceeds accruing from the sale of her late husband's property.

This fact, namely, that Tarakanth left a widow, shews that he had a representative, even supposing Kasseenath died before him, but there can be no doubt that Tarakanth had a 2 annas share of this lakhiraj property, as well as of the other possessions of his grandfather, and that this interest was usurped by the sons of Kasseenath either before or after the death of Tarakanth. But this cannot vitiate the claim of the plaintiff, who has acquired a title and proved that under it he is entitled to a 2 annas share of this 37 beegahs. I therefore confirm the decision of the principal sudder ameen, and dismiss this appeal.

THE 25TH FEBRUARY 1850.

Case No. 31 of 1849.

Appeal from a decision of Moulvee Syed Osman Alli, Additional Principal Sudder Ameen, passed on the 24th of April 1849.

Praunkisten Mullik, (Defendant,) Appellant,

versus

Kisten Mohun Sircar, (Plaintiff,) Respondent.

THE plaintiff, in this case, states that having succeeded to his maternal grandfather's land, consisting of 5 cottahs in Bhobannypore, one of the defendants, Taramonee, having previously got an *ex parte* decree against his mother for the sale of 1 cottah of the land as her share of the property, proceeded to attach the whole 5 cottahs; that plaintiff filed objections against this attachment, and procured the release of 4 cottahs, but when the sale of 1 cottah was effected, and that portion purchased by Praunkisten, another

defendant, he, in taking possession thereof, ousted plaintiff from the whole 5 cottahs. He applied to the magistrate to interfere under Act IV. of 1840, but being directed to have recourse to a regular suit, he brought this action to recover the 4 cottahs from defendant.

Praunkisten and Taramonee allege that plaintiff has no rights at all; that when plaintiff's maternal grandfather Ramlochun Ghose died, he left 5 cottahs of land which was thus divided—Kumulmonee, Ramlochun's daughter and plaintiff's mother, had 1 cottah, Ram-monee, Ramlochun's widow, 2 cottahs, and Rammohun, his adopted son, 2 cottahs. Komulmonee mortgaged her 1 cottah to Taramonee for a loan, and Rammonee and Rammohun also pledged their land to her on the same account. After the deaths of Rammonee and Rammohun, the latter's son, Rajkisten, came into possession of their shares, and then leased out the 4 cottahs to Praunkisten, assigning the rent to Taramonee, as a yearly set-off on account of the interest due to her on his father's debt; that the 1 cottah belonging to Komulmonee was sold under the decree as stated by plaintiff, and purchased by Praunkisten.

The additional principal sudder ameen observes that there is no proof of Ramlochun having left his widow, and Rammohun his adopted son, 2 cottahs each, nor is there any proof whatever of his having adopted Rammohun. Neither is there any thing to prove the lease of the land by Rajkisten to Praunkisten, whereas the witnesses, whose evidence was taken on the spot by an ameen deputed to make a local enquiry, establish, the additional principal sudder ameen considers, the fact of plaintiff having been in possession till ejected by Praunkisten. The lower court therefore awarded him possession of the 4 cottahs and profits to the amount of rupees 59-14.

Praunkisten appeals against this decision, and takes exception to the evidence of plaintiff's witnesses, and alleges the adoption to be of so old a date that it is impossible now to prove it, but that his witnesses deposed to Rammohun having performed Ramlochun's funeral rites as adopted son.

On referring to the record, I find that Taramonee applied to the civil court to carry out her decree, by attaching the 1 cottah of land alluded to, and that on the 14th May a proceeding of the court was drawn up, stating that Kisten Mohun. (present plaintiff) had moved the court to release from its attachment 4 cottahs of land, descended to him from his maternal grandfather, which Taramonee had included in the attachment, and that the court directed the same to be immediately excluded. Previous to this, Taramonee had filed a reply to this objection, denying plaintiff's right and possession, and alleging the land had been pledged to her by Rammonee and Rammohun, as now stated in her reply, but saying nothing of the land having been leased to Praunkisten by Rajkisten, who is stated by her, in her petition, to be residing at Benares.

Praunkisten and Taramonee now allege that two months after that petition was filed, Rajkisten returned home and then executed the lease, by virtue of which Praunkisten now holds possession. But this seems improbable, for if Rajkisten, as stated, returned so shortly after this matter was openly discussed in the court, he must have been made aware of plaintiff's claim to the property, and that the 4 cottahs had been excluded from attachment on representations made by plaintiff that the land was *his* own; and it is scarcely credible that Rajkisten, when assigning the land to another, would have omitted to secure his own rights and interests, by representing them to the court, and not have attempted to refute the statements of the plaintiff. I am, however, of opinion that Rajkisten's silence is better accounted for by the belief that this story of Ramnagun's adoption is altogether fictitious. There is nothing to support it, except the assertion of defendants and three witnesses, whose evidence on such a point cannot be safely relied upon. The only other point to be remarked upon is that the defendants have been unable to prove their possession since June 1840, the date of the alleged lease. They have put in some dakhilas to prove that the rent was paid by them during this period and previous to the sale, but these vouchers only shew that the rent was first paid by them some time in 1843, and therefore not sufficient to establish their possession since 1840. On these grounds I see no reason to interfere with the order of the lower court, and therefore confirm it.
